STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. ROSEN

DATE: November 23, 1948

FROM : C. A. Evans

SUBJECT: LOUIS CAMPAGNA, was, et al
BRIBERY; PAROLE MATTERS

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

In connection with the trial of Eugene Bernstein, Chicago Attorney and Anthony Accardo, was., Chicago hoodlum, the USA, Chicago, utilized the services of a handwriting examiner employed by the Alcohol Tax Unit in Chicago. As a matter of background, Bernstein and Accardo were charged with making false claim to the Federal Government in connection with their visits to the penitentiary while Louis Campagna and his associates were incarcerated. The jury returned a verdict of not guilty on November 21, 1948.

In connection with the testimony offered by the USA in this trial by the ATU handwriting examiner, the Chicago Division has advised that it was not consulted by the USA concerning this handwriting examination. Under Bureau instructions, the Chicago Division consulted the USA when it was learned that an ATU representative had conducted a handwriting examination and had testified at this trial. The USA advised that on reviewing the evidence for trial, he observed two signatures in the Bureau of Prison files which did not appear to him to have been written by the same person. The USA accordingly got in touch with William J. Sheehan, a Special Investigator of the Alcohol Tax Unit in Chicago who is assigned to handwriting and fingerprint examinations for that agency. The USA had Sheehan come to his office to look at the signatures in order that the USA would have technical advice in this connection. It is observed that this was only two days before this case was scheduled to go to trial. According to the USA, he did not intend to utilize any handwriting testimony at that time but subsequently changed his mind and had the ATU representative testify in this connection.

ACTION

No action is necessary. This matter is submitted for your information. It is noted that early in this investigation, the Chicago Division offered to have any necessary handwriting examination conducted by the FBI Laboratory. At that time the USA indicated that he did not know if such examination was necessary and that [redacted] under subpoena to the Federal Grand Jury and could not be released.

b3

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HEREIN IS UNCLASSIFIED
DATE 3/2/93 BY Sp5 alw
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INDEXED - 105

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EX-109

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

CC-

To: COMMUNICATIONS SECTION.

DECEMBER 6, 1943

Transmit the following message to:

DIRECTOR, ATLANTA URGENT

LOUIS CAPONE, AKA., ET AL, EXTORTION, PAROLE MATTERS. REFERENCE DIRECTOR FOUR FOUR-FOUR AND OTHER BUREAU ACTION TAKEN BY USA TO PERFECT AN APPEAL FROM DECISION U.S.D.C., ATLANTA, SUSTAINING PLEAS OF AUTREFOIS CONVICT FOR DEFENDANTS CAPONE AND GUCK.

66055

ENDUM

CG - CHICAGO (BY MAIL)

CAE:LJP

3/5/43 SPSA/cw

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U.S. DEPT OF JUSTICE

RECORDED - 97 | 54 - 2000 - 1967
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23 DEC 8 1943

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Pennington
Mr. Quinn Tamm
Mr. Lease
Miss Gandy

SENT VIA 7:07 P M Per

66059

FBI WASHINGTON DC 12-6-48 7-07 PM JG

SAC, ATLANTA URGENT

LOUIS CAMPAGNA, WAS., ET AL, BRIBERY, PAROLE MATTERS. REURTEL DECEMBER FOUR. FOLLOW AND SUTEL BUREAU ACTION TAKEN BY USA TO PERFECT AN APPEAL FROM DECISION USDC, ATLANTA, SUSTAINING WRITS OF HABEAS CORPUS FOR SUBJECTS CAMPAGNA AND GIOE.

HOOVER

END

OK FBI A T GWM

[redacted] 3/5/95 [redacted] SBSC/aw

Federal Bureau of Investigation

United States Department of Justice
Post Office Box 1850
Atlanta 1, Georgia
December 6, 1948

Director, FBI

AIR MAIL SPECIAL DELIVERY

Re: LOUIS COMPAGNA; CHARLES GIOE;
BRIBERY; PAROLE MATTERS; ANTI RACKETEERING;
HABEAS CORPUS PROCEEDINGS.

Dear Sir:

Remytel December 4, 1948.

There is enclosed to the Bureau, Chicago, and New York offices one copy of findings of fact and conclusions of law together with a copy of the judgments rendered by E. MARVIN UNDERWOOD, Judge, U. S. District Court, Atlanta, which orders the release of both COMPAGNA and GIOE at the end of fifteen days, unless the Government appeals or the U. S. Parole Board issues new Parole Violator warrants.

United States Attorney Atlanta has notified Department, which, according to him, will decide what, if any action will be taken by the Government. You will be advised of any further developments.

Very truly yours,

John C. Bills

John C. Bills,
Special Agent in Charge.

Enc.

58-62
WLS:aej

cc: Chicago (Enc.) AMSD

cc: New York (Enc.) AMSD

RECORDED - 11

58-2010-1968

5 DEC 8 1948

DEC 16

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LOUIS COMPAGNA,

Petitioner,

-VS-

W. H. HIATT, WARDEN,
UNITED STATES PENITENTIARY,
ATLANTA, GEORGIA,

Respondent.

No. 2329

HABEAS CORPUS

CHARLES GIOE,

Petitioner,

-VS-

W. H. HIATT, WARDEN,
UNITED STATES PENITENTIARY,
ATLANTA, GEORGIA,

Respondent.

NO. 2330

HABEAS CORPUS

The above cases were, by agreement of the parties, tried together because they involve identical questions of law and substantially the same facts.

These findings of acts and conclusions of law are entitled in both cases and filed therein as findings and conclusions in each case, respectively.

Petitioners, after conviction by a jury, were, on the 31st day of December, 1943, in the United States District Court for the Southern District of New York, sentenced to terms of ten years imprisonment upon an indictment charging violation of the Anti-Racketeering Act.

They were, on August 13, 1947, released on parole. They remained at large on parole until arrested on July 23, 1948, upon Parole Violator Warrants dated July 21, 1948, and signed by Judge Fred Rogers, Member of the United States Board of Parole. They were immediately thereafter returned to the Federal Penitentiary in Atlanta, Georgia.

ENCLOSURE - 1968

Petitions for writ of habeas corpus were presented to this Court on behalf of both petitioners on September 2, 1948, and rules to show cause why the petitions should not be granted were issued the same day and made returnable, to meet the convenience of the parties, on September 20, 1948.

After hearing on September 20th, writs of habeas corpus were issued, returnable on an agreed date, October 25, 1948. The cases were then heard. Evidence was introduced, oral argument heard, and counsel granted, upon their request, until November 22, 1948, to file principal briefs and three days thereafter to file reply briefs.

Petitioners allege as grounds for writs of habeas corpus that the original sentences of the District Court for the Southern District of New York are void because the Court was without jurisdiction, it being claimed that the offense was not committed in New York, and because conviction was obtained by perjured testimony, known by the prosecutor to be such.

The evidence does not support these contentions and they are without merit. Discharge, therefore, on these grounds is denied.

Petitioners further allege as additional grounds that their present restraint is unlawful because they are held by virtue of Parole Violator Warrants which are void because not based on reliable or any information of violation of parole, and because they have been denied, since their return to the penitentiary, the kind of hearing to which they are entitled under the law.

The statute, applicable in these cases, authorizing revocation of parole, provides that if the Board of Parole, or any member thereof, shall have reliable information that the prisoner has violated his parole, a member of the Board may issue a warrant for the retaking of the prisoner.

The authority of the Board is strictly statutory and limited by the terms of the Act. A member of the Board has no power to issue a Parole Violator Warrant except in compliance with conditions imposed by the Act. If issued without compliance, it is a nullity and arrest thereunder unlawful. A person so arrested is entitled to relief as from illegal restraint.

An express condition precedent to the issuance of a Parole Violator Warrant is that the issuing authority "have

reliable information that the prisoner has violated his parole." This is in the nature of a jurisdictional requirement and may be inquired into by competent authority.

However, if there is some substantial information of a parole violation possessed by the Board member at the time he issues the warrant, a court will not inquire into the reliability of the information, that is properly for the determination of the Board member in the exercise of a fair and real discretion.

But the information must be considered reliable by him and must be substantial and relate to parole violation occurring subsequent to the grant of parole, except in special circumstances not present in these cases. Otherwise the issuance of the warrants would be arbitrary or capricious, which the law never permits. In probation cases, which are analogous to parole cases, the courts have pointed this out particularly. "While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice." (Burns vs. U.S., 287, U. S. 216, 223). The Court of Appeals for the Fourth Circuit, also in a probation case, say: "It is not conceivable that Congress intended to confer upon the court the power to call back the defendant at any time within five years after conviction and imprison him no matter how blameless his conduct may have been during the interim, or how strictly he may have observed the terms of his probation. It follows that, whenever it is charged that a probationer has failed to follow the instructions of the court, he may not be sentenced until he has been given notice of a specific charge and an opportunity to be heard in his defense, and until the court, upon hearing, shall have judicially determined that his conduct during the probation period has not conformed to the course outlined in the order of probation." (Hollandsworth vs. U. S., 34 F.2d 423, 428). It would seem that Congress had in mind at least as strict rules for the governing of the Parole Board as for the Courts.

The crucial question here presented is - did Judge Rogers, the member of the Board who issued the warrants on July 21, 1948, have at that time any information of a parole violation?

One would think that this would be a very simple and easy fact to determine, but it has become complicated by the refusal of Judge Rogers and the other Board members to testify as to the fact or to deny petitioners' testimony that there was no violation, and by failure of respondent to show, or tender proof of, any violation or information relating to parole violation.

If the fact justified it, statement of the information acted upon would have brought a quick and easy end to the cases.

However, respondent and the Board have chosen to rely solely on their claim that the Court may not inquire into the matter, but must accept as a conclusive presumption that the warrants were based on reliable information, although the evidence adduced and unrebutted shows that there was no violation and therefore no reliable information upon which to base the warrants. Petitioners' claim seems to be supported, not only by their testimony, but also by statements made by Board members, admitted by them, before a congressional committee which was investigating the paroles, and by the refusal of the Board to even advise petitioners of the charges against them. These statements and their refusal to say what charges of parole violation were claimed or what information they had at the time the warrants were issued, appear from the very uninformative answers given to the interrogatories propounded to them by petitioners.

If Judge Rogers possessed reliable information, he might have, in his discretion, either withheld or issued the warrant; but if he had no such information, there was no room for the exercise of discretion and no authority to issue the warrants. Its issuance would be a nullity and restraint thereunder unlawful.

There is a presumption of the legality of the warrant, but it is not a conclusive presumption and it has been overcome by the evidence in the case. The Court must decide the case upon the evidence before it. If as a matter of fact the Board did have information of parole violation which would support the warrant, but elected to withhold it in the face of the positive evidence of its non-existence for technical reasons, for example, to test its jurisdiction or for other reasons, the Court cannot go beyond the record and speculate what might be true or what evidence might have been offered, but must take the case as proved and decide it on the evidence adduced.

On the present record, therefore, the Court accepts as proved that no information of violation of parole was possessed by any Board member, at the time the warrants were issued, creditable affirmative evidence to this effect having been adduced at the trial and not rebutted or denied.

The distinction must be borne in mind, that this proceeding is not an attempt to invade the jurisdiction or infringe upon the discretion of the Parole Board to pass upon the question of parole violation and propriety of revocation, but it presents the legal question as to whether conditions precedent to the exercise of its jurisdiction and discretion in issuing the warrants have been shown. The first proposition is a matter of discretion as to which the courts will not interfere. The second involves the question of illegal restraint into which the courts will inquire.

From the evidence in these cases and the contentions of respondent, the position taken by him and the Parole Board appears to be that when a Parole Violator Warrant is once issued by a member of the Board, even if not based on any information reliable or otherwise, the Court may not inquire into its validity, although competent evidence is offered to prove the non-existence of such information and the respondent does not deny its non-existence or offer any proof of its existence. To accept such contention would be to deny to a person illegally restrained the protection against arbitrary and capricious acts, which the law affords every one. (Burns vs. U. S., 287 U. S. 216). No authority has been presented to support this contention. On the other hand, a statement by Mr. Justice Brandeis in the case of Bilokumsky vs. Tod, 263 U. S. 149, 153, seems to establish the contrary in the following words: "It is also true that if the Department makes a finding of an essential fact which is unsupported by evidence, the Court may intervene by the writ of habeas corpus."

This expression was made in a deportation case but the principle announced is applicable in this case.

In another deportation case the Supreme Court say: "'It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to give validity to its action. When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective.'" (Mahler vs. Eby, 264 U.S. 32, 45, citing and quoting from Wichita R.R. & Light Co. v. Public Utilities Commission, 260 U.S. 48, 59).

Evidence of non-violation of parole was admitted over objection of respondent that the Board had not finally acted, not to justify release on the ground that there was no violation, but as evidence tending to show, along with other evidence, that Judge Rogers did not have reliable information of violation at the time he issued the warrants and that they were therefore void. It was not a question of violation of parole, but a question of possession of information by Judge Rogers. It is an attack on the validity of the warrants, not on the exclusive right of the Board to passupon the question of parole.

The cases cited by respondent in support of his contention are cases where there was involved discretion of the Board after hearing and not an attack on the warrant of arrest prior to a hearing. In the case of Christianson vs. Zerbst (C.C.A. 10) 89 F.2d 40, cited by respondents, the Court said: "A warrant cannot issue in the absence of any information. Its issuance without information would be capricious and without basis in law. But, when information is at hand, its reliability is a matter for the board or the member, as the case may be, to determine; and that determination is conclusive in a proceeding of this kind." This principle is not questioned, but the issue here is whether or not there was any information. The attack upon the warrant in the Christianson case was not made until after a hearing and after the parole was revoked. There was positive evidence, adduced in the habeas corpus hearing, that the Board had information from a reliable source that Christianson was drinking, abusive to his family, had threatened to kill a member of the family, and was guilty of other violations. The Court held on the evidence presented that there was sufficient information to justify the issuance of the warrant and that its reliability was a matter for the Board.

In the case of Rogoway vs. Warden, (C.C.A. 9) 122 F.2d 967, the Court held that "The issuance of the warrant for arrest was not improper for, as outlined above, the Parole Board was possessed of some information the reliability of which was within its determination," and did not hold that the warrant could issue in the absence of substantial evidence of violation.

In the Fifth Circuit cases, the attacks on the warrant were made after hearing and the revocation of parole. The Court held in Fox vs. Sanford, 123 F.2d 334 that, "As provided by statute Fox was given a hearing before a member of the Board of Parole, and the reliability or sufficiency of the information upon which the Board acted is not a matter for determination by the courts in a proceeding for habeas corpus."

In Bowers vs. Dishong (C.C.A. 5) 103 F.2d 464, the issue was whether or not the Parole laws applied to prisoners on parole under conditional release. The Court held that they did and that "The Board of Parole shall have the exclusive authority to issue warrants for the retaking of any United States prisoner, who has violated his parole." The validity of the Parole Violator Warrant was not in question.

It will be observed that in none of the cases cited was the validity of the warrant attacked, at least not until after hearing and final revocation of parole, and not attacked, as here, upon the ground that there was no evidence at all to support the warrant.

Where a person has been arrested on an illegal warrant and has submitted without objection to a hearing properly conducted before the Parole Board, which has resulted, on substantial evidence, in finding him guilty of violating his parole and in the revocation of his parole, he will be held to have waived the defect in the warrant and the revocation will be upheld. But if the warrant is claimed to be void because illegal, and prompt objection to restraint thereunder is made, as in these cases, the Court may properly inquire into the restraint and discharge the parolee if it finds the warrant illegal. In these circumstances, a parolee need not wait indefinitely for determination of his case by the Board, but may apply to the courts for relief by writ of habeas corpus. The justice of such a rule is apparent when, as shown by this record, petitioners have been in restraint under the Parole Violator Warrants since July 23, 1948, and the Board has stated that it could not say when a final decision in the cases would be reached, that sometimes it required several months after hearing to reach cases for final determination. Assuming that the warrants are void and the restraint illegal, this would mean that petitioners would be illegally confined for an indefinite period without any opportunity to have the legality of their detention adjudicated.

Respondent and the Board contend that to permit the Court to pass upon the validity of the warrants at this state of the proceeding would "divest the Board of the jurisdiction committed to it by Congress," and that the Court could not even hear testimony offered to show that the Parole Violator Warrants are illegal. The Board may consider it of importance to establish a precedent that its action in the issuance of the Parole Violator Warrants was beyond the power of courts to inquire into, but in view of the fact that the Board, where a warrant is illegally issued, may at any time on reliable information, issue a new warrant based on parole violation happening at any time subsequent to the granting of the parole and before the termination of the original sentence, it would not seem to be a matter of serious inconvenience or miscarriage of justice. But be this as it may, I think to uphold such position would be to uphold an arbitrary act and not the exercise of discretion. Furthermore, the law looks upon the liberty of the citizen as a matter of very grave importance, and to claim that by an arbitrary act an agency of the Government could hold an individual in restraint for an

indefinite period of time without opportunity to test its validity cannot be upheld.

From the evidence in these cases, I find that the Parole Violator Warrants in question were invalid and that the restraint thereunder is illegal. This being true, the time honored relief of habeas corpus should be granted in these proceedings.

In a similar habeas corpus proceeding (United States of America, ex rel. Paul de Lucia vs. Thomas P. O'Donovan, Marshal, No. 48-C-867, pending in the United States District Court for the Northern District of Illinois), Judge Igoe has discharged deLucia, who was a co-defendant of petitioners in the New York indictment, on a writ of habeas corpus upon substantially the same facts and contentions of law as made in the present cases. The case has not yet been reported.

In view of the foregoing findings of fact and conclusions of law, it is not necessary to consider the other grounds of the petitions for writ of habeas corpus.

The Federal courts "have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty," (28 U.S.C.A. Sec. 452) and after hearing, "to dispose of the party as law and justice require." (28 U.S.C.A. Sec. 461).

Under these sections the Court may properly delay the discharge of petitioners for such reasonable time as may be necessary to allow opportunity for an appeal if desired and also to allow opportunity for the issuance of new Parole Violator Warrants, based on reliable information, should the Board or a member thereof possess or become possessed of such information and issue new warrants within the period of delay allowed. (Mahler vs. Eby, 264 U.S. 32, 46; Dawes vs. Gough (C.C.A. 5) ___ F.2d ___, decided November 4, 1948).

Judgments will issue in accordance with the foregoing with stay of execution of the judgment for a period of fifteen days.

This 4th day of December, 1948.

E. MARVIN UNDERWOOD
UNITED STATES DISTRICT JUDGE.

FILED IN CLERK'S OFFICE
DECEMBER 4, 1948

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LOUIS COMPAGNA,

Petitioner,

-VS-

W. H. HIATT, WARDEN,
UNITED STATES PENITENTIARY,
ATLANTA, GEORGIA,

Respondent.

NO. 2329

HABEAS CORPUS

JUDGMENT

In conformity with findings of fact and conclusions of law filed herewith, IT IS CONSIDERED, ORDERED AND ADJUDGED that the writ of habeas corpus be, and hereby is, sustained, and that respondent discharge petitioner Louis Compagna from custody at the end of fifteen (15) days from this date, unless a further supersedeas be granted by this Court, such delay being allowed to afford opportunity for appeal if desired, or in order to enable the United States Board of Parole to issue a new Parole Violator Warrant, provided said Board, or a member thereof, has, or shall become possessed of, reliable information of parole violation during such period of delay.

This 4th day of December, 1948.

E. MARVIN UNDERWOOD
UNITED STATES DISTRICT JUDGE.

FILED IN CLERK'S OFFICE
DECEMBER 4, 1948

1968

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHARLES GIOE, Petitioner, -VS- W. H. HIATT, WARDEN, UNITED STATES PENITENTIARY, ATLANTA, GEORGIA Respondent.	)	NO. 2330 HABEAS CORPUS

JUDGMENT

In conformity with findings of fact and conclusions of law filed herewith, IT IS CONSIDERED, ORDERED AND ADJUDGED that the writ of habeas corpus be, and hereby is, sustained, and that respondent discharge petitioner Charles Gioe from custody at the end of fifteen (15) days from this date, unless a further supersedeas be granted by this Court, such delay being allowed to afford opportunity for appeal if desired, or in order to enable the United States Board of Parole to issue a new Parole Violator Warrant, provided said Board, or a member thereof, has, or shall become possessed of, reliable information of parole violation during such period of delay.

This 4th day of December, 1948.

E. MARVIN UNDERWOOD
UNITED STATES DISTRICT JUDGE.

FILED IN CLERK'S OFFICE
DECEMBER 4, 1948.

BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 4 1948

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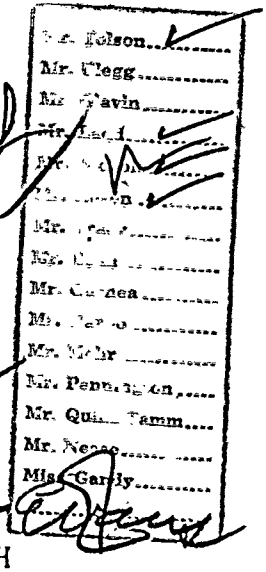

FBI ATLANTA 12-4-48 6-35 PM LH

DIRECTOR URGENT

LOUIS CAMPAGNA, ET AL, BRIBERY, ~~PAROLE~~ PAROLE MATTERS, HABEAS CORPUS PROCEEDINGS. CLERK USDC ADVISES THAT JUDGE E. MARVIN UNDERWOOD HANDED DOWN OPINION TODAY SUSTAINING WRIT OF HABEAS CORPUS FOR BOTH CAMPAGNA AND CHARLES GIOE. ORDER ALLOWS GOVERNMENT FIFTEEN DAYS IN WHICH TO APPEAL OR TO ISSUE NEW PAROLE VIOLATOR WARRANTS PROVIDED GOVERNMENT CAN SET FORTH BASIS FOR SUCH WARRANTS. COPY OF ORDER WILL BE OBTAINED AND FORWARDED BUREAU.

BILLS

END

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V.

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COMMUNICATIONS SECTION

DEC 17

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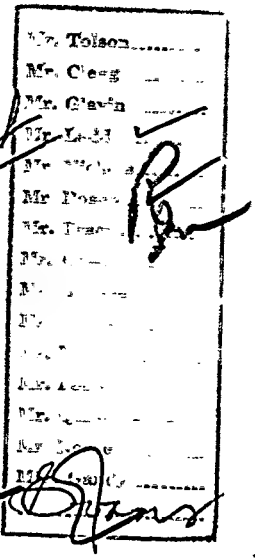

FBI ATLANTA 12-17-48 8-40 PM EST RSC

DIRECTOR AND SAC, CHICAGO URGENT

LOUIS COMPAGNA - CHARLES GIOE, BRIBERY, PAROLE MATTERS, HABEAS CORPUS PROCEEDINGS. AUSA, ATLANTA TODAY UPON INSTRUCTIONS OF DEPARTMENT FILED WITH FEDERAL JUDGE E. MARVIN UNDERWOOD, ATLANTA, A MOTION TO RECONSIDER JUDGEMENT ENTERED BY HIM DECEMBER FOUR LAST. SUCH MOTION RECITES THAT ON DECEMBER SIXTEEN LAST U. S. BOARD OF PARALE TRANSMITTED TO USP; ATLANTA CERTIFICATION OF REVOCATION AS TO BOTH COMPAGNA AND GIOE DIRECTING THAT THEY SERVE THE REMAINER OF THEIR ORIGINAL SENTENCES. RESPONDENT TAKES THE POSITION THAT SUCH ACTION PLACES PETITIONERS IN A SUBSTANTIALL DIFFERENT POSITION IN THAT NOW THEY ARE BEING HELD UPON AUTHORITY OF THE ACTION BY THE PAROLE BOARD RATHER THAN UPON PAROLE VIOLATOR WARRANTS WHICH JUDGE UNDERWOOD HAD RULED INVALID. YOU WILL BE ADVISED OF COURT ACTION REGARDING THIS MOTION WHICH WILL BE HEARD TWENTIETH INSTANT.

BILLS

END

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/17/95 BY SP5 au/cw

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158-2000-1970

EX-51

34 DEC 30 1948

cc: Mr. Rosen

G.I.R.2

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 20 1948

TELETYPE

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

FBI ATLANTA 12-20-48 1-50 PM FW

DIRECTOR AND SAC, CHICAGO ..... URGENT

LOUIS COMPAGNA - CHARLES GIOE, BRIBERY, PAROLE MATTERS, HABEAS CORPUS PROCEEDINGS. REMYTEL SEVENTEENTH INSTANT. JUDGE UNDERWOOD, USDC, ATLANTA, TODAY DENIED MOTIONS FOR RECONSIDERATION OF JUDGEMENTS. EXPRESSES OPINION THAT REVOCATION OF PAROLES WERE BASED ON ILLEGAL PAROLE VIOLATOR WARRENTS, WERE ISSUED WITHOUT FAIR HEARINGS AND THEREFORE INVALID. AUSA, ATLANTA, SIGNIFIED INTENTIONS TO APPEAL. COMPAGNA AND GIOE EXPECTED TO BE RELEASED TODAY ON FIVE THOUSAND DOLLARS CASH BOND EACH.

BILLS

END

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/8/85 BY SP5CAW CEIAED-5-48

ACK IN ORDER PLS

0 1 51 PM OK FBI WASH DC MEX-28

OK FBI CG AMK

RECORDED - 42 58-2000-1997

60 JAN 5 1949

34 DEC 30 1948

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI
ATTENTION: MR. A. ROSEN

DATE: December 8, 1948

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was; etal
BRIBERY; PAROLE MATTERS

For the information there are transmitted herewith clippings from the December 3rd issue of the Chicago Tribune, the Chicago Daily News and the Chicago Sun-Times and the December 5th issues of the Chicago Tribune and the Chicago Herald-American, all of which pertain to the captioned matter.

MG
Encs. (5)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3-2-95 BY SP5A/CW

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DEC 10 1948

Jan 10

5 ENCL

JAN 12 1949

Parole probe seeks a chat with Accardo

The special federal grand jury investigating the "quickie paroles" of the movie extortionists is going to take its turn at trying to get Tony Accardo to talk.

The U.S. Marshal has a subpoena for Accardo, former lieutenant of Al Capone, it was learned. Serving it may be a problem, however, for it's rumored that the underworld boss is in Florida resting from rigors of his recent trial at which, incidentally, he didn't talk.

Accardo and Atty. Eugene Bernstein were acquitted of charges of falsifying prison records on visits to Leavenworth Penitentiary. There they talked with Paul (The Waiter) Ricca and Louis (Little New York) Campagna, two of the extortionists whose paroles the jury is investigating.

The jury adjourned Thursday after Bernstein answered questions for an hour and a half.

Dec 3, 1948

3/7/95 SP5 a(2)

Gang Chief Sought by Probers

U.S. deputy marshals were seeking Friday to serve a summons on Tony Accardo, West Side gang leader.

He is wanted by the federal grand jury investigating the paroles of four Capone hoodlums.

Accardo and Attorney Eugene Berstein recently were acquitted of falsifying government records and conspiracy in visits to Leavenworth penitentiary.

Bernstein, who appeared before the grand jury Thursday, said he told 'everything I know.'

Mum On Questions

The lawyer, while not divulging any of the jury's questions, said 'in my opinion the things they asked me about were inconsequential.'

The four gangsters were paroled after serving one-third of 10-year sentences for a $1,800,000 shakedown of the movie industry.

2 Back in Prison

Two of them, Charles 'Cherry Nose' Gioe and Louis 'Little New York' Campagna, have been returned to the Atlanta penitentiary.

3/3/95 SPSC/AM

Dec 3, 1945

2 U.S. AGENCIES PROBE SOURCES OF GANG RICHES

Ricca-Campagna Deal, Potson Fund Sifted

Gangsters' riches were the subject of two federal inquiries yesterday. One concerned the $128,000 paid in settlement of income tax claims against Paul Ricca and Louis Campagna, top men of the Capone gang. The other concerned the missing fortune of Big Jim Colosimo, who was slain in 1920, and the fortune later in the possession of Mike Potson, who managed Colosimo's cafe and who now owes the government $518,162 in back taxes.

The $128,000 inquiry was by the special federal grand jury which is still investigating the paroles granted Ricca and Campagna but later revoked. That concerning Colosimo's and Potson's fortunes was unofficial—by revenue department agents. Both were secret.

Seek "Ransom Fund" Source

Eugene Bernstein, lawyer who negotiated the $128,000 settlement of $650,000 of government claims against Ricca and Campagna, was called before the special grand jury which indicted him last January. It was understood the jurors wanted to know the identity of the men who put up the $128,000 "ransom fund."

"Of those kind of people I don't ask questions," Bernstein had told a congressional committee in referring to the strangers who at various times walked into his office and dropped bundles of money, muttering "for Paul" or "for Louis."

Deputy United States marshals last night were searching for Tony Accardo, assistant gang chief who was indicted with Bernstein on charges of criminal conspiracy. He is believed to have information about the income tax affairs of Ricca and Campagna. Accardo and Bernstein were acquitted on the conspiracy charge in federal court.

Hits At Potson Defense

The same treasury agency here which handled the claims against Ricca and Campagna for a tax on the $1,800,000 extorted from motion picture concerns made the claim for back taxes against Potson for 1940, 1941, 1942, and 1943. Potson was convicted and sentenced to two years in prison.

Assistant United States Atty. Edward J. Ryan, in the Court of Appeals on Wednesday, said Potson's defense was that $250,000 he spent for real estate, jewelry, automobiles, etc., in the 1940s was money he had accumulated prior to 1920, and which he had hidden in safety boxes for 20 years. That was not the truth, Ryan insisted.

Yesterday it was said that treasury agents had considered the possibility of Potson having possession of the $250,000 reported missing from Colosimo's estate in 1920.

Capone Took Things Over

Colosimo, credited with having brought Alphonse Capone here from New York as his bodyguard later installed him as bouncer at his brothel at 2222 Wabash av., was shot to death May 11, 1920, in his cafe at 2124 S. Wabash av. Capone later took over Colosimo's business.

In his trial Potson said Colosimo had entrusted the $250,000 to him for several days. Potson also said, treasury agents recalled, that he had plenty of money of his own in the early 1920s.

"I don't know that $250,000 was missing from Colosimo's estate," Atty. Stephen Love said yesterday. "I believe the figure was about $100,000. I was appointed attorney for the estate after the death of Rocco De Stefano, who handled the original investigation. I recall that we hired a detective agency and offered a reward of $15,000 for information regarding hidden assets. The estate is now closed."

CHICAGO TRIBUNE

Dec 3, 1948

3/7/95 SPSA/aw

CAMPAGNA, GIOE ORDERED FREED IN PAROLE FIGHT

Atlanta Judge Upholds Capone Gangsters

Two important Capone gang hoodlums, Louis Campagna and Charles Gioe, who were sent back to prison last summer as the aftermath of a scandal following early

Charles Gioe

Louis Campagna

paroles from stiff prison sentences, were ordered freed yesterday by a federal judge in Atlanta, Ga.

It was the second setback of its kind recently suffered by the government and the federal parole board. On Nov. 23, Federal Judge Michael L. Igoe in Chicago ordered freedom for Paul Ricca, wealthy mob boss, in his fight against returning to prison.

Supreme Court Appeals Seen

Appeals in both cases are to be carried by the government to the United States Supreme court, it has been indicated. One of the main questions involved is the autonomous authority of the parole board, upheld by some courts, to return parolees to prison on its own initiative and on evidence it considers sufficient.

In freeing Gioe and Campagna, Judge E. Marvin Underwood of Atlanta rebuked the government for its refusal to offer proof of the parole violations charged against them. Actually, he said, no violation of parole was shown.

The case goes back to December, 1943 when Gioe, Campagna, Ricca, and Phil d'Andrea were sentenced to 10 years' imprisonment for a $1,800,000 extortion racket against the movie industry. They were paroled Aug. 13, 1947, after serving one-third of their sentences. The paroles, called a scandal, brought about congressional investigations.

Ricca's Return Blocked

The immediate result was action by the federal parole board last J[illegible] 23 to revoke the hoodlums' [illegible]oles. D'Andrea was not immediately involved because of illness. Campagna tried to block the move by habeas corpus action, but lost, and he and Gioe were whisked back to Atlanta prison. Ricca stayed his rearrest order thru habeas corpus proceedings, and won before Igoe.

Campagna and Gioe in September sued for freedom via habeas corpus proceedings before Judge Underwood in Atlanta. Both contended that the evidence accusing them of parole violations was flimsy. The government failed to contest their arguments, holding that Judge Underwood had no jurisdiction. Federal attorneys argued, in effect, that the parole board's actions were not reviewable by the courts.

Judge Underwood held that a crucial question was whether Fred Rogers, member of the parole board who issued the arrest warrants, had at any time any information of a parole violation.

Refusal to Testify Cited

"The fact has become complicated," Judge Underwood ruled, "by the refusal of Rogers and other board members to testify as to the fact or to deny petitioners' testimony that there was no violation."

Another complication, the judge added, was the government's sole reliance in the case on "their claim that the court may not inquire into the matter." He asserted that "the evidence, adduced and unrebutted, shows that there was no violation (of parole), and therefore no reliable information upon which to base the warrants."

Judge Underwood ordered Campagna and Gioe freed within 15 days, in which time the government will have the right to appeal or to issue rearrest orders against them.

CHICAGO SUNDAY TRIBUNE: Part 1 Page 17** . 5, 1948

CHICAGO DAILY TRIBUNE

Dec 5, 1948

3/3/95 SPS-ei/cw

Gangsters Win Release on Writ, Out in 15 Days

Atlanta Judge Issues Order

Freedom for two more of the Guzik-Ricca-Capone gang chiefs whose "quickie" paroles 16 months ago brought on congressional and federal grand jury investigation, was ordered yesterday by the U. S. District Court in Atlanta.

Beneficiaries of the order are Louis (Little New York) Campagna and Charles (Cherry Nose) Gioe, who were rearrested last June and returned to Atlanta Federal prison on charges of parole violations.

Follows Ricca Victory

The ruling followed by 10 days a writ of habeas corpus granted by U.S. District Judge Igoe here in behalf of Paul (The Waiter) Ricca, also known as Paul De Lucia, co-chief of the gang with Jake (Greasy Thumb) Guzik since the death of Al Capone.

Federal Judge Marvin Underwood in Atlanta ordered Campagna and Gioe released within 15 days.

Could Recind Orden

Judge Underwood said if the Department of Justice filed an appeal or if the Federal Parole Board issued new warrants, based on new evidence, charging parole violations by the pair, he would rescind the order

However, attorneys for the gang chiefs were confident of their release.

Neil Andrews, former U.S. district attorney in Atlanta, who won the victory for the hoodlums as representative and associate of William Scott Stewart, Chicago attorney who kept Ricca out of jail, told The Herald-American over long distance telephone:

"I don't know if the govern-

(Continued on Page 2, Col. 3)

ative design.

Order Campagna, Gioe Freed Within 15 Days

(Continued from Page 1.)

ment will appeal, or if there will be new warrants.

"Precedent, however, indicates even in the event of an appeal, Campagna and Gioe would be permitted to leave prison on bond."

In Washington, Fred S. Rogers, parole board member who signed the parole violation warrants on which Ricca, Campagna and Gioe were rearrested last June, said he had "no statement to make."

Asked if he would confer with other board officials on the Department of Justice the coming week, to determine whether to appeal from Judge Underwood's decision, or issue new warrants, he answered only:

"I have absolutely no statement to make."

In view of the board's action however, in the case of John Roselli, of Los Angeles, in the case of paroled Ricca, Campagna, Gioe and Philip D'Andrea, on Aug. 13, 1947, observers here anticipated no action by the parole board to block the releases.

Roselli was rearrested for parole violation at the same time paroles of the Chicago trio were revoked.

Roselli was ordered back to prison in a court action, but the parole board finally withdrew its objections and he was freed.

U.S. District Attorney Ellis Munday at Atlanta said he would confer with his aids Monday concerning an appeal, but added he would be guided by "the wishes of the Department of Justice and the Federal Parole Board at Washington."

No charge of parole violation was made against D'Andrea.

THE CHICAGO AMERICAN

Dec 5, 1948

3/3/95 SPSA(ar)

The Attorney General 1973

January 4, 1949

Director, FBI

RECORDED - 28 LOUIS CAMPAGNA, with aliases, Etal
ENEMY; PUBLIC MATTERS

For your further information in this case, I am enclosing herewith photostatic copies of newspaper articles which have been published at Chicago.

Enclosure

3/2/95 SPSA/aw

SENT FROM D. O.
TIME 11:30 AM
DATE 1-4-49
BY

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Gandy

50-2000
CAE:LG

RECEIVED-DIRECTOR
FBI
U.S. DEPT. OF JUSTICE
1949 JAN 4 4 12 PM

RECEIVED-TOLSON
FBI
DEPT OF JUSTICE
JAN 4 1 20 PM

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

Mr. Tolson.....
Mr. Clegg.....
Mr. Glavin.....
Mr. Nichols.....
Mr. Harbo.....
Mr. Mohr.....
Mr. Pennington.....
Mr. Quinn Tamm.....

TO : Director, FBI
ATTENTION: MR. A. ROSEN

FROM : SAC, Chicago

DATE: December 23, 1948

SUBJECT: LOUIS CAMPAGNA, was; etal
BRIBERY; PAROLE MATTER

For the information of the Bureau in connection with the captioned matter, there are enclosed clippings from the Chicago Tribune of December 17th, and the Chicago Sun-Times, the Chicago Daily News and the Chicago Herald American, all of December 18th.

MG
Encs. (4)

RECORDED - 83

158-2000-1973
FBI
31 JAN 6 1949

4 ENCL 83

Let to att'y Gen. 1-4-49

52 JAN 12 1949

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5/2/95 BY SP5 alw

GRAND JURY CLOSES 13 MONTH INQUIRY INTO GANG PAROLES

The federal grand jury which has been investigating possible violations in paroles granted four Capone gang hoodlums was discharged yesterday at its own request by Judge John P. Barnes. The jury had been in session for 13 months.

The jury made no report. After being discharged, Henry W. Buchholz, 2836 Dickens av., foreman, said he believed the jurors had exhausted every means available and that he hoped their investigation would result in "more efficiency in our parole system."

The four gangsters, whose paroles were investigated, appeared before the jury which heard 75 witnesses. The hoodlums are Paul De Lucia, also known as Bicca; Louis Campagna, Charles Gioe, and Philip D'Andrea. They were released from prison after serving one-third of 10 year sentences imposed for a $1,000,000 extortion of the movie industry.

The grand jury returned one indictment, accusing Anthony Accardo, Capone gangster, and Atty. Eugene Bernstein, of conspiracy to falsify government records. Accardo was accused of ~~posing~~ as an attorney on prison visits with Bernstein. They were acquitted in a jury trial.

3/7/95 SPSCL(CW)

CHICAGO DAILY TRIBUNE

Dec. 17, 1948

NOT

Fights— mobster releases

Special to THE SUN-TIMES

Atlanta, Ga.--The warden of Atlanta Federal Prison has taken steps to keep two former Capone gangsters in the penitentiary.

They are Louis (Little New York) Campagna and Charles (Cherry Nose) Gioe, one time associates of Al Capone.

Warden William H. Hiatt filed a motion with U.S. Dist. Judge Marvin E. Underwood asking him to reconsider his action in which he ordered the two Chicagoans released.

The two were convicted in 1943 for participating in a $1,000,000 shakedown of the movie industry. They were paroled Aug. 13, 1947. Both were re-arrested as parole violators last July 23 following a congressional investigation into irregularities in their paroles.

Their attorneys got them released on a writ Dec. 4 on the argument that the evidence was insufficient to revoke their paroles.

Warden Hiatt's motion contends that Gioe and Campagna violated their paroles.

3/7/95 sp5a/aw

CHICAGO DAILY SUN—TIMES

Dec. 18, 1948

ENCLOSURE

Ask Parole Review on Hoodlums

Warden William H. Hiatt of the Federal Penitentiary at Atlanta has asked the Federal Court to reconsider a ruling ordering the release of two ex-Capone mobsters.

The prisoners are Louis 'Little New York' Campagna and Charles 'Cherrynose' Gioe who are scheduled to go free Monday.

Judge Marvin E. Underwood of Atlanta ordered their release within 15 days on Dec. 4 after Campagna and Gioe argued the parole board failed to produce sufficient evidence to justify revocation of their paroles.

Campagna and Gioe were paroled Aug. 13, 1947, after serving four years of a 10-year sentence. They were re-arrested for parole violations July 23, 1948.

Hearing on the warden's motion was set for Monday.

3/2/95 SPSA/AD

CHICAGO DAILY NEWS

Dec. 18, 1948

ENCLOSURE

Bar Yule Paroles for 2 Mobsters

The anticipated before-Christmas freeing of Louis (Little New York) Campagna and Charles (Cherry Nose) Gioe, two Chicago chiefs of the Guzik-Ricca-Capone mob, from Atlanta Federal prison was checked today, at least temporarily.

The pair, ordered freed within 15 days by U. S. District Judge Marvin E. Underwood at Atlanta on Dec. 4, will have to wait at least until after Monday. The 15-day period expires tomorrow.

Warden William H. Hiatt caused the delay by filing a motion asking the judge to reconsider his decision of Dec. 4, when he ordered the release of the two gang chiefs on writs of habeas corpus.

Judge Underwood ruled the government had failed to produce evidence justifying revocation of the paroles of Campagna and Gioe, when they were rearrested here last July 23 and whisked back to Atlanta as parole violators.

However, he granted 15 days before their release to give the government time to appeal from his decision, or issue new warrants for parole revocations.

Neither the parole board nor the Department of Justice took action.

Hiatt then stepped in as custodian of ~~the prison~~ with the motion for reconsideration.

3/7/95 SPSC(Aw)

Dec. 18, 1942

NCL

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI
ATTENTION: MR. A. ROSEN

DATE: January 5th, 1949

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was; etal
BRIBERY; PAROLE MATTER

For the information of the Bureau there is transmitted herewith a clipping from the December 29, 1948, issue of the Chicago Tribune, which relates to the captioned matter.

MG
Enc.

Mr. Nichols
Mr. Lodd
Mr. Tracy
Mr. Carnen
Mr. Harbo
Mr. Pennington
Mr. Quinn Tamm

DEFERRED TO BE DIVE

G.A.I. R.X-7

STOP DESK

RECORDED - 28

58-2000-1974

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4 JAN 19 1949

INDEXED - 28

1 ENCL 29

EX-76

EX-76

5 1 JAN 27 1949

391

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/93 BY SP1 alcw

JUDGE ORDER FREEING RICCA ASSAILED AS U.S. ACTS TO APPEAL

The government yesterday assailed the order of Judge Michael L. Igoe in federal District court last Nov. 23 that prevented the return of Paul Ricca, head of the Capone syndicate, to a federal penitentiary as a parole violator. Arguments against the order were contained in a statement filed by United States Atty. Kerner preliminary to an appeal to the United States Court of Appeals.

The statement declared Igoe had no jurisdiction in the case, that Ricca had not exhausted his administrative remedies since no hearing had been held on the parole board order revoking his parole, and that the court erred in adopting Ricca's conclusion that the parole board had no evidence of violation of parole except that contained on the revocation warrant.

Ricca and three other Capone gangsters were paroled after serving one-third of their 10 year sentences for extortion. The board later ordered Ricca and two others back to prison for violation of parole. This order was upset by Igoe who ruled in a hearing on Ricca's petition that the board acted illegally.

CHICAGO DAILY TRIBUNE

Dec 29 1948

3/25/55 SPSA/aw

Encl 1 52-20

The Attorney General

February 1, 1949

Director, FBI

LOUIS CAMPAGNA, was, et al
EXTORTION, RACIAL MATTERS

For your further information in this case, I am enclosing herewith a copy of a report prepared by Special Agent Frederick E. Roderick at Los Angeles, dated January 14, 1949.

CAE:lef

Enclosure

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-15-97 BY SP5 alw

FEB 1 3 01 PM '49
U.S. DEPT. OF JUSTICE
FBI - LOS ANGELES

RECORDED - 137
58-2000-1975
4 FEB 2 1949

SENT FROM D. C.
TIME 4 PM
DATE 2-1-49
BY VLK

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Gandy

FEB 7 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: January 24, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS COMPAGNA; CHARLES GIOE;
BRIBERY; PAROLE MATTERS; ANTI RACKETEERING;
HABEAS CORPUS PROCEEDINGS

For your information, Judge ROBERT L. RUSSELL, United States District Court, Atlanta, Georgia, today entered an order allowing the Government twenty days additional time in which to file pleadings and the record in connection with its appeal from the decision of Federal Judge E. MARVIN UNDERWOOD, Atlanta, Georgia. The twenty days will run from January 28, 1949.

The Bureau will be advised of developments.

c/c Chicago

U. I. R.-8

WLS/ds
58-62

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3-10-93 BY SP2 alm

58-2000

RECORDED - 143
EX-95

58-2000-1976
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JAN 31 1949

50 FEB 8 1949

The Attorney General

February 3, 1949

Director, FBI

LOUIS CAMPAGNA, was., ETAL
BRIBERY
PAROLE MATTERS

EX-37 58-2000-1977

For your further information in this case, I am enclosing herewith a photostatic copy of a newspaper article relative thereto which appeared in the Chicago Daily News for January 20, 1949.

Enclosure

FEB 3 4 19 PM '49
RECEIVED FBI
U.S. DEPT. OF JUSTICE

FEB 3 4 49 PM '49
FBI

SENT FROM D. C.
TIME 900
DATE 2-4-49
BY

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Candy

58-2000

FEB 9 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI
ATTENTION: MR. A. ROSEN

DATE: January 21, 1949

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was; etal
BRIBERY; PAROLE MATTERS

Mr. Tolson
Mr. Ladd
Mr. Tracy
Mr. Egan
Mr. Carnes
Mr. Pennington
Mr. Quinn Tamm

For the information of the Bureau there is transmitted a clipping from the Chicago Daily News of January 20, 1949, which relates to the captioned matter.

MG
Encl.

DEFERRED RECORDING

EX-37

RECORDED - 39

158-2000-1977
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32 FEB 4 1949

EX-37

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/93 BY SP5 a/aw

Ltr to Att. Gen. 2-3-49 C.A.B.

Paroled Hoods Men of Leisure

BY EDMUND J. CIKANEK

Three of Chicago's notorious hoodlums, who fought a two-year legal battle over doing a little extra 'time' as parole violators, are now enjoying their leisure in another fashion.

The four Capone gangsters served one-third of their 10-year terms for extorting $1,800,000 in the movie industry when they were paroled in 1947.

Two of them, Paul 'The Waiter' Ricca, alias DeLucia, and Louis 'Lefty-Louie' Campagna, have become proud of their titles as country squires.

Man-About-Town

Charles 'Cherry-Nose' Gioe, who managed several of the syndicate handbooks and doubled as Ricca's messenger, is playing the role

PAUL RICCA LOUIS CAMPAGNA

of man-about-town. He has an apartment in the Seneca Hotel. He sleeps late, rarely rising before 10 a.m.

After an unhurried breakfast, he spends the afternoon and evening visiting former associates and promenading through hotel lobbies.

The fourth hoodlum, Phil D'Andrea, did not undergo a parole revocation as did the others. He has been under a physician's care at his home in Chicago Heights

Ricca, who has developed a hobby of blooded-cattle, spends most of his time at his 1,100-acre farm near Newark, in Kendall County.

Walled Estate

Campagna's haven is behind walls of his 100-acre estate near Berrien Springs, Mich. No one is permitted to enter the grounds without the permission of 'Squire' Campagna or his attractive wife Charlotte.

Campagna's wife handles most of the financial end of the farm business, and of a partnership in a floral shop on Chicago av.

A short time ago, a former associate of the gang boss met him as he came from his lawyer's office. How were things on the farm?

'Well,' said Louie with a broad smile, 'it's a nice place for people who want to retire.'

3/3/95 SPS rec'd

CHICAGO DAILY NEWS
Jan 20, 1949

EXCLUSIVE

SAC, Chicago

February 2, 1949

Director, FBI

RECORDED 87 62-2000-1978

LOUIS CAMPAGNA, was, et al
BRIBERY; PAROLE MATTERS

EX-39

Reurlet January 26, 1949.

A copy of the report of SA Frederick E. Roderick, dated January 14, 1949, at Los Angeles, should be made available to the United States Attorney at Chicago.

CAE:LH

[redacted] 3/5/95 SR SA (CW)

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Gandy

COMMUNICATIONS SECTION
MAILED 12
FEB 2 1949 P.M.
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

[redacted]

[redacted]

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: January 26, 1949

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, Was., et al.
BRIBERY
PAROLE MATTERS
(Bufile 58-2000)

Reference is made to the RUC report of SA FREDERICK E. RODERICK dated January 14, 1949 at Los Angeles.

DEFERRED BY ORDINO

The Bureau is requested to advise this office when this report has been approved for transmission to United States Attorney OTTO KERNER, JR. in Chicago.

RER-EAK
58-194

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3-2-95 BY SP5 CA/CW

RECORDED 87

58-2000-1978

13 FEB 10 1949

Let. Chicago 2-2-49 Ltr/LH

39

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. ROSEN

DATE: February 7, 1949

FROM : W. H. Carter

SUBJECT: LOUIS CAMPAGNA, ET AL
BRIBERY
PAROLE MATTERS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5 CAC/CW

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

At 3:15 p.m. today, Miss Woody, Assistant Supervisor of Parole, U. S. Board of Parole, called and related the following:

She said Philip D'Andrea, one of the subjects in the Campagna case who was previously on parole to the U. S. Probation officer, Chicago, Illinois, had recently made a request of the Board to have his parole supervision transferred to the U. S. Probation Officer at Los Angeles, California. He gave as reasons the fact that he was in bad health, had a son in bad health and wanted to be near some property he owned in the State of California to watch after his interests in this property. Parole supervision was granted by the Board for a temporary period and D'Andrea is desirous of having supervision transferred to Los Angeles on a permanent basis. Subsequently, the U. S. Probation Officer at Los Angeles has made some inquiries and has found that Philip D'Andrea owns jointly with one Nathan Grossman of Hemet, California, ten acres of unimproved farm land in Riverside County, California. This is approximately ninety miles east of Los Angeles. The deed which D'Andrea has to this land was acquired recently, exact date not indicated, and the background of the association between D'Andrea and Grossman is not known. The Probation Officer at Los Angeles wanted to have the benefit of whatever information the Board might possess concerning D'Andrea's relationship with Grossman and any information the Board might have concerning his interest in the land referred to above.

Miss Woody said the files of the U. S. Board of Parole had contained no information along these lines and Mr. Walter Urich, Executive Officer, U. S. Board of Parole, requested her to call me to determine if the Bureau's investigation in the Campagna case has disclosed any information concerning these matters.

I told Miss Woody that I would look into this matter and call her back.

In discussing this matter with Supervisor Evans, it was learned that the Bureau conducted no investigation concerning Philip D'Andrea inasmuch as there was no information indicating that he had violated his parole when the Bureau's investigation in the Campagna case was undertaken. It was learned, however, that D'Andrea was suffering from heart trouble.

RECOMMENDED ACTION

RECORDED - 119
INDEXED - 119
58-2000-1979
FEB 10 1949

It is recommended that Miss Woody or Mr. Urich at the Board of Parole be called back and advised that the Bureau's investigation in this matter did not include as one of the subjects Philip D'Andrea and we have no information concerning the property interests of D'Andrea in California or his relationship with Nathan Grossman of Hemet, California.

Miss Woody advised 2-8-49 WHC

WHC:ige

58-2000-1979
FEB 10 1949

213

FEDERAL BUREAU OF INVESTIGATION

Form No. 1
THIS CASE ORIGINATED AT CHICAGO

FILE NO. 58-125

REPORT MADE AT	DATE WHEN MADE	PERIOD FOR WHICH MADE	REPORT MADE BY
LOS ANGELES	1/14/49	6/20, 22; 7/4; 10/5, ~~17, 22; 11/8, 17,~~ 19, 23; 12/1/48	FREDERICK E. RODERICK CSC

TITLE	CHARACTER OF CASE
LOUIS CAMPAGNA, was., et al	BRIBERY PAROLE MATTERS

SYNOPSIS OF FACTS: Attention: Assistant Director A. Rosen

Identity of subscribers to telephone numbers called by ROSELLI set out. [redacted] advised ROSELLI with JACK DRAGNA, Los Angeles Italian hoodlum, and MOE SEDWAY, of Las Vegas, Nevada, to discuss horse race book ownership at Santa Anita Turf Club, Las Vegas. ROSELLI observed by Bureau Agents in Los Angeles on 6/20/48, attending wedding and wedding reception of JACK DRAGNA's daughter, which was attended by various people of the criminal element, whose identities are set out. Info. furnished that ROSELLI was aware of investigation being conducted concerning his activities. Los Angeles PD Gangster Detail was attempting to obtain decision from Los Angeles City Attorney's Office re possible arrest of ROSELLI when ROSELLI's parole was revoked. ROSELLI released from Los Angeles County Jail, 11/18/48, when U. S. Board of Parole, Washington, D. C., ordered his release.

b7D

- R U C -

REFERENCE:

Report of SA FREDERICK E. RODERICK, Los Angeles, 6/11/48
Chicago teletypes to Los Angeles, 6/23/48 and 11/18/48

APPROVED AND FORWARDED: SPECIAL AGENT IN CHARGE

DO NOT WRITE IN THESE SPACES

RECORDED - 108
INDEXED - 108

COPIES OF THIS REPORT

Los Angeles

FEB 23 1949

EX-109

U. S. GOVERNMENT PRINTING OFFICE 7—2034

LA 58-125

DETAILS:

(1) The identity of telephone subscribers which were called by subject JOHN ROSELLI as set out in referenced Los Angeles report of SA FREDERICK E. RODERICK dated June 11, 1948, were determined to be as follows:

Palm Springs 6600, Palm Springs, California, was ascertained to be a telephone number for which there is no telephone subscriber in Palm Springs, California.

Plaza 7-6100 is listed to the Eagle Lion Film Corporation of 165 West 46th Street, New York City, New York.

Whitehall 4010 is the unpublished telephone number of CHARLES BARON, 181 East Lakeshore Drive, Apartment 1602, Chicago, Illinois.

Calumet 1000 is the telephone number of Charles Baron, Inc., 2229 South Michigan Avenue, Chicago, Illinois.

Franklin 0700 is listed to the Auditor's Office in the Hotel LaSalle, 10 North LaSalle Street, Chicago, Illinois.

[redacted] has furnished information which came to the attention of the Los Angeles Office that MOE SEDWAY, Manager at the Flamingo Hotel, Las Vegas, Nevada, as well as Director of the Continental Wire Service in Las Vegas, Nevada, was in Los Angeles on February 17 and 18, 1948, in response to a specific request made by JACK IGNATIUS DRAGNA, alias JACK PIZZOTTA, FBI #307014, a reported Los Angeles racketeer. According to [redacted] on February 17, 1948, MOE SEDWAY met JACK DRAGNA at a doctor's office in Los Angeles, and DRAGNA was accompanied by JOHN ROSELLI, who at the time was on Federal Parole. DRAGNA is reported to have stated that he wanted to see SEDWAY because DAVE STEARNS, who was opening the new Santa Anita Turf Club in Las Vegas, Nevada, had promised DRAGNA and ROSELLI a 50% "cut in" on the proceeds of the horse race book at the Santa Anita Turf Club in Las Vegas, Nevada, if DRAGNA and ROSELLI would help him obtain the service for the horse race book.

b7D

On July 4, 1948, informant T-1 advised SA DONALD G. HANNING that during the course of a conversation between JACK GRAHAM, a free-lance motion picture writer, and EUGENE LING, a producer-writer at Eagle Lion Studios, on July 4, 1948, the name of JOHN ROSELLI was mentioned in their conversation. GRAHAM stated that he and some friends, who had looked up ROSELLI's criminal record had ascertained that it was two pages long. GRAHAM stated that ROSELLI was very bitter and a "confirmed cop-hater" and was well aware of the fact that he was being watched closely. GRAHAM stated that although he is known to be a great "lady's man" he would not allow a woman to enter his apartment because he was being watched. He would not associate or have

any contact whatsoever with any former or present racketeers who have any criminal records. He stated in the conversation between GRAHAM and LING that ROSELLI was going to buy another automobile, possibly a Ford, because he could easily afford it but that he was intending at that time to live modestly.

ROSELLI stated to GRAHAM that certain Cadillac dealers were high-pressuring him to buy a Cadillac, but he was not going to do so at that time. It was also mentioned that, although the time element was not stated, in connection with a motion picture being made by Eagle Lion Studios with the title of "African Slave", BRYAN FOY, Executive Vice-President of Eagle Lion Studios in view of ROSELLI's probation status thought it a good idea to bring as a technical advisor on the picture, ROSELLI's parole officer, who was formerly a missionary in Africa, having spent 25 years there. The name of this Federal Parole Officer was not mentioned in the conversation.

On June 20, 1948, FBI Special Agents JOHN COOPER, LAWRENCE M. EITEN and the Reporting Agent observed subject ROSELLI attending the wedding of the daughter of the above-mentioned Italian alien, JACK DRAGNA, who, years ago, was arrested by Los Angeles Police Department in the company of JOHN ROSELLI, JOHN SANZONERI and JOHN RUSSO, when all these men were armed. It is noted that DRAGNA, ROSELLI and one EDDIE ROLLINS, in 1929, were suspects in the mysterious disappearance and possible murder of one FRANK BAUMGARTAKER. DRAGNA operated the Trans-American Wire Service which furnished horse racing results to book makers in the Los Angeles area until June, 1947. ROSELLI was observed by Bureau Agents driving away from the Sacred Heart Catholic Church, 2122 Sichel Street, Los Angeles, where the wedding took place, in a 1948 Cadillac convertible sedan which was registered to CHARLIE FOY, Los Angeles night club owner and brother of BRYAN FOY.

At this wedding the above Agents observed the following individuals who are known to have criminal records:

MICHAEL "Mickey" COHEN, was., FBI #755912, a principal criminal figure in the Los Angeles area who has received extensive publicity in Los Angeles newspapers recently because of his gambling activities as well as his presence during the murder of certain individuals.

Mrs. LA VON WEAVER COHEN, was., FBI #4580818, wife of MICKEY COHEN and former prostitute, who is known to be friendly with all of COHEN's criminal associates.

ALLEN SMILEY, alias Aaron Smehoff (the true name), FBI #1306281, who was under two indictments in the Federal Court in Los Angeles, one indictment charging perjury, the one indictment derived from false testimony given at an Immigration and Naturalization Service hearing, and the other indictment charging him in three counts with falsely claiming citizenship.

SMILEY has received wide newspaper publicity for his association with the deceased BENJAMIN "Bugsy" SIEGEL in his activities in Los Angeles. SMILEY was present at the above wedding with one LUCILLE CASEY, a model, with whom he has associated for about five years. SMILEY is reported to be an avid gambler on baseball and football games as well as horse races. He is a close associate of HYMIE MILLER, a reported book-maker.

HYMIE MILLER, brother to BENNY and GEORGE MILLER, reported book-makers in the West Los Angeles and Culver City, California, area.

SALVATORE PISCOPO, was. Salvatore Piscoso, Louis Nerli and Louis Rossi, FBI #1491870. PISCOPO was reported to be a book-maker for MICKEY COHEN and is known in previous years to have handled stolen jewelry and narcotics.

G. HARRY ROTHBERG, 615 North Elm Drive, Beverly Hills, California. It is noted that HARRY ROTHBERG is a brother of SAM ROTHBERG, former Vice-President of American Distilleries, Inc., and was a close associate of BENJAMIN "Bugsy" SIEGEL, as well as ALLEN SMILEY during the construction of the Flamingo Hotel in Las Vegas.

The following criminal characters from the San Diego area were observed to be also present:

JOSEPH "Joe" RUSSO of the 1100 block 16th Street, San Diego, California, who was formerly a San Diego City Councilman and has become a large-scale book-maker. RUSSO is reported to have operated the Continental News Service supplying horse racing results for book-makers in San Diego for a small time. He was also employed by the Trans-American News Service when it operated in the early part of 1947 under the direction of JACK DRAGNA. This individual is an associate of one HERMAN HETZEL who is reported to be the most extensive and active book-maker in San Diego.

ANDREW JOHN CANNONICO, aka. Johnnie Keyes, who is a well-known book-maker and gambler in the San Diego area. He is reportedly a business associate of RUSSELL ALESSIO in the book-making business, and according to [redacted] was previously connected with ALESSIO in the operation of "Spaghetti Joe's Cafe", where large quantities of narcotics were peddled. KEYES is an ex-prize fight manager and was once featured in ROBERT RIPLEY's "Believe it or not" claiming to be the only white mayor in New York's China Town. b7D

TONY MIRABLE. According to [redacted] MIRABLE's background includes a reported member in the Italian Mafia, Secret Italian Society, and is a close associate of JACK DRAGNA. MIRABLE owns the Rainbow Gardens at Fourth and "F" Streets in San Diego and is very friendly with the JOE SCIUTO family in San Diego. While in Los Angeles MIRABLE was observed to drive a 1947 b7D

Lincoln Continental coupe, 1947 California license 2W7038, which is registered to CLARA SCIUTO, 4244 Altamirano Way, San Diego, California.

FRANK BOMPENSIERO, San Diego Police Department #8426A. BOMPENSIERO is reported to be a lieutenant for TONY MIRABLE and is a part owner with MIRABLE of the Gold Rail Bar on Third Avenue in San Diego, which bar is a favorite hangout for book-makers and other reported "sportsmen". It is reported that narcotics are sold in this saloon. BOMPENSIERO assisted in financing the now defunked Trans-American Wire Service in San Diego.

SAM GREENBAUM, brother to GUS GREENBAUM, a wealthy gambler and politician in Phoenix, Arizona.

HYMAN ROSEN, who was a subject in a black market operation when he owned the Quality Meat Packing Company at 3207 East Vernon Avenue, Vernon, California.

At 4:00 P.M., on June 20, 1948, SA FREDERICK E. RODERICK observed ROSELLI enter the Biltmore Bowl Room at the Hotel Biltmore in Los Angeles, which was exclusively used for the reception of JACK DRAGNA's daughter, which wedding reception was very elaborate and was attended by hundreds of people. This wedding reception was described by Los Angeles Police Department Officer NICHOLAS J. COVELLI as one in which almost all those attending were wearing their "heaters", meaning their pistols.

Photographs of persons sitting at the various tables at this reception were taken through the efforts of SAs JOHN COOPER, LAWRENCE M. EITEN, FREDERICK E. RODERICK, and FBI employee GERRY POWELL. In these photographs, copies of which are being retained in the Los Angeles Office for future reference, there can be observed present such individuals as MICKEY COHEN, Mrs. LA VON WEAVER COHEN, HYMIE MILLER, ALLEN SMILEY, SALVATORE PISCOPO, and other known criminal characters including subject JOHN ROSELLI.

One photograph taken of ROSELLI reflects that he was present at a table with four unknown men and an unknown woman. On October 17, 1948, this photograph was shown to Informant [redacted] who was unable to identify the individuals present. However, [redacted] immediately upon seeing the photograph, exclaimed that the two men seated to ROSELLI's right were known Italian criminal characters. He stated that the one seated farthest from ROSELLI is known in the Los Angeles area as GEORGE BATES, who is known to reside in Arcadia, California, and maintains an expensive home near the Santa Anita Race Track in Arcadia. BATES is not his true name, and he has assumed this name in order to disclaim his Italian parentage. b7D

The other individual seated to ROSELLI's right is known as JIMMY BURNS, an Italian criminal character who has made much money in the

southwest part of Los Angeles handling gambling and dice games. He also has a criminal record and an Italian name. This informant was attempting to obtain the true names and the criminal records of these two individuals but when ROSELLI was released from the Los Angeles County Jail on November 18, 1948, [redacted] made no further inquiries in this connection. b7D

On November 17, 1948, informant T-2 advised that Sergeant JOHN J. O'MARA, of the Los Angeles Police Department Gangster Detail, had been detailed to conduct an extensive investigation concerning the activities of JOHN ROSELLI in the Los Angeles area. As a result, certain motion picture executives, whose names were not furnished by this informant at the time, contacted Sergeant O'MARA subsequent to his investigation and requested that he testify in the U. S. Federal Court in Los Angeles as a character witness for ROSELLI and an offer was made to Sergeant O'MARA in this connection, but the exact amount was not known by the informant. Informant T-2 added that MARTY WYNN, Robbery Detail, Los Angeles Police Department, had been actually subpoenaed, but that WYNN's position was different from that of Sergeant O'MARA because WYNN had assisted the Eagle Lion Studios and JOHN ROSELLI as a technical advisor in the Robert Kane Production first called "The 29 Clues", but later released in Los Angeles on November 25, 1948, under the title "He Walks by Night".

Informant T-2 also stated that Lieutenant WILLIAM BURNS, Head of the Los Angeles Police Department Gangster Detail, as yet had not been able to locate murder fugitive ROBERT BURTON, who is wanted for the murder of a Negro pimp who operated in the Central Avenue area in Los Angeles. Informant T-2 had personal knowledge that Lieutenant BURNS had ascertained that BURTON had gone with one JIMMY GARRISON, a criminal associate of MICKEY COHEN, to Eagle Lion Studios to visit with JOHN ROSELLI, who afforded BURTON and GARRISON a tour through the studios. This information is substantiated with that furnished by Lieutenant GEORGE BOWMAN, of a second Los Angeles Police Department Gangster Detail, who advised the Los Angeles Office that he had personally observed the signatures of BURTON and GARRISON on the ledger where they signed in to enter the studio gates at Eagle Lion Studios as visitors and guests of JOHN ROSELLI.

On November 17, 1948, information was received from informant T-2 that one Sergeant JOHN J. O'MARA had determined that ROSELLI had not registered in the Los Angeles area as an ex-convict. O'MARA presented the facts to the Los Angeles City Attorney's Office. The Los Angeles City Attorney was unable to reder an appropriate decision to Sergeant O'MARA for the arrest of ROSELLI for failure to register as an ex-convict, which is a misdemeanor. According to the informant the Los Angeles City Attorney's Office had never had a case presented before where the Federal Parolee had failed to register in Los Angeles under the Municipal Code regulations. While the Los Angeles City Attorney's Office was pondering for a decision the arrest of ROSELLI was made in Los Angeles and therefore the Los Angeles City

Attorney and the Los Angeles Police Department Gangster Detail made no further investigation concerning ROSELLI's activities.

On November 19, 1948, ROSELLI received wide newspaper publicity in Los Angeles concerning his release from the Los Angeles County Jail where he was being held for suspected parole violation. ROSELLI made the public statement that he would resume his "Hollywood job" giving technical advice to gangster pictures. The newspaper stated that ROSELLI's attorneys, OTTO CHRISTENSEN and FRANK DESIMONE, had taken ROSELLI's case to the United States Board of Parole in Washington, D. C. after an unsuccessful application had been made in the U. S. Federal Courts in Los Angeles. CHRISTENSEN and DESIMONE had won an order setting aside the parole revocation for ROSELLI.

REFERRED UPON COMPLETION TO THE OFFICE OF ORIGIN

LA 58-125

I N F O R M A N T P A G E

Informant T-1 [redacted] b7D

Informant T-2 [redacted] Los Angeles

[redacted] Los Angeles

[redacted] Los Angeles, California.

Mr. Peyton Ford
The Assistant to the Attorney General

February 11, 1949

Director, FBI

RECORDED - 29 58-2000-1981

EX-118

LOUIS CAMPAGNA, was.; ET AL
BRIBERY; PAROLE MATTERS

Mr. Otto Kerner, Jr., United States Attorney at Chicago, has contacted our Division there telephonically and advised that after consultation with you, it was desired that a twenty-four hour physical surveillance be maintained by Special Agents of this Bureau on Subjects Louis Campagna, Paul DeLucia and Charles Gioe for at least a week. As you know, our investigation in this case was terminated several months ago. The immediate purpose of the investigation requested is not readily apparent although Mr. Kerner did advise he had received somewhat nebulous information to the effect that card games of unlimited stakes were being held in the home of Subject DeLucia and were attended by Subjects Gioe and Campagna among others.

The purpose of the surveillances is not known. In view of the unusual nature of this request requiring the services of many Special Agents at a time when there are so many urgent matters pending, this is being called to your attention for your consideration as to whether the indicated activity is desired.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/93 BY SP5 CA/CA

58-2000
CAE:gjb:LS

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Gandy

FEB 7 22 PM '49
FBI - DEPT OF JUSTICE
RECEIVED - DIRECTOR

COMMUNICATIONS SECTION
MAILED 15
FEB 14 1949 P.M.
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

RECEIVED - DIRECTOR
F B I
U.S. DEPT. OF JUSTICE
FEB 14 9 45 AM '49

4

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. LADD

FROM : A. ROSEN

DATE: 2/11/49

CALL 11:30 AM

SUBJECT: LOUIS CAMPAGNA, ET AL
BRIBERY
PAROLE MATTERS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/93 BY SP5 a/Cw

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

PURPOSE

To advise that USA Kerner has, today, verbally informed SAC McSwain that Mr. Peyton Ford is desirous of having Bureau Agents maintain a physical surveillance for at least a week on parolees DeLucia, Gioe and Campagna.

DETAILS

Mr. McSwain stated that USA Kerner had just telephoned him and informed that he had discussed instant case with Mr. Ford during a recent trip to Washington, D. C. He stated that somewhat nebulous information had been obtained from a neighbor of Paul DeLucia's to the effect that card games of unlimited stakes were being regularly held at DeLucia's home and Paul DeLucia, Gioe, and Campagna participate in these games. It was alleged that an unidentified police captain of the Chicago Police Department has been attending these games and associating with the parolees.

Information has also been obtained to the effect that the parolees had purchased cars from Zvitak, a Ford agency, and that one of the cars purchased by the parolees was seen being driven by "Machinegun" Jack McGurn. Mr. Kerner gave no more further clarifying information concerning the source of this information and indicated that it was quite nebulous. However, he stated that he had discussed the matter with Mr. Peyton Ford and that Mr. Ford suggested that he request the Chicago Office of the FBI to maintain a 24 hour physical surveillance on these three parolees for a period of about a week for the purpose of determining their activities, associates and the like. Mr. Kerner stated that after the information was developed on these surveillance he would be in a better position to determine what, if any further action, should be taken with respect to the parolees. Mr. McSwain stated that these parolees are presently at liberty on a writ pending appellate action and as a result do not have to submit parole reports. Mr. McSwain stated that previous experience in endeavoring to surveil these subjects has indicated that they are "tail conscious" and that it would be most difficult to keep them under surveillance. He stated that in his opinion it would be desirable if the Bureau would not assume responsibility for this surveillance but that he did not feel the Bureau would be in a position to refuse this request. He stated that although USA Kerner has merely made the request verbally and has been informed that the matter would be referred to the Bureau, Mr. Kerner would, if desired, unquestionably confirm his request in writing.

RECORDED - 29 EX-118 58-2000-1981

FEB 8 1949

RECOMMENDED ACTION - It would appear that, in view of the Attorney General's interest in this case and the exhaustive investigation heretofore conducted by the Bureau at the Attorney General's specific request, the Bureau would not be in a position to refuse to conduct these surveillances. It would seem desirable, however, to have the request directed to the Bureau from Mr. Peyton Ford.

ACTION - There is attached a proposed letter to Mr. Ford, pointing out the objectionable features of the surveillances and requesting that he instruct they be instituted if they are to be conducted.

EJM/rh

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO MR. LADD

FROM A. ROSEN

SUBJECT: LOUIS CAMPAGNA, ETAL
BRIBERY
PAROLE MATTERS

DATE: 2/16/49

CALL 12:00 Noon

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5a/aw

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

Mr. Mike Horan in the Department called, with reference to the Bureau's memorandum of February 11, 1949, which pointed out the objectionable features of the surveillances requested by Mr. Ford of the three parolees involved in this case, and advised that he had taken the matter up with Mr. Ford and Mr. Ford was of the opinion that in view of the implications involved in this matter it would be well to maintain this surveillance.

You will recall that on February 11, 1949, USA Kerner, Chicago, had telephonically communicated with SAC McSwain and had advised him of Mr. Ford's desirability of having Bureau Agents maintain a physical surveillance on the three parolees, Paul DeLucia, Gioe and Campagna, for at least a week, inasmuch as somewhat nebulous information had been received from a neighbor of DeLucia's that card games of unlimited stakes were being held in the home of subject DeLucia, which games were attended by subjects Gioe and Campagna, as well as an unidentified member of the Chicago Police Department. It had also been rumored that the parolees had purchased cars from Zvitak, a Ford agency, and that one of the cars purchased by the parolees was seen being driven by "Machinegun" Jack McGurn. The Bureau's letter of February 11, 1949, pointed out that, in view of the unusual nature of the request requiring the services of many Agents at a time when there were so many urgent matters pending, this matter was being called to the Department's attention so as to ascertain whether the indicated activity was desired.

RECORDED - 138 58-2000-1982

Mr. Horan advised that he was calling merely to alert the Bureau that a memorandum would be received by the Bureau within the next day or two requesting that the requested surveillance be conducted.

32 MAR 4 1949

When memo is received I think we should decline the request. Kerner can handle it or bring them before a grand jury

5K-1

FEB 18

2/16

Regardless of what Kerner wants to do, I recommend all McSwain should do is impress a "stop" check.

H.

FLP/rh

52 MAR 9 1949

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 22 1949

TELEMETER

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/93 BY SP5 CAC

WASH 3 FROM CGO 2 2 5-45 PM

DIRECTOR, FBI URGENT

ATTENTION.. ASSISTANT DIRECTOR A. ROSEN

LOUIS CAMPAGNA, WAS., ET AL, BRIBERY, PAROLE MATTERS. CONTINUED SPOT SURVEILLANCE TODAY OF CHICAGO RESIDENCES AND KNOWN HAUNTS HERE OF GIOE, CAMPAGNA AND DE LUCIA FAILS TO DEFINITELY PLACE SUBJECTS HERE. DISCREET SPOT SURVEILLANCE CONTINUING TO LOCATE THEM. BUREAU WILL BE ADVISED DAILY OF DEVELOPMENTS.

RECORDED - 15 58-7000-1983

MC SWAIN 61 MAR 11 1949

RECEIVED

F B I
MAR 1 1949

EX-49 23

END AND ACK PLS

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 21 1949

TELEMETER

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Harbo
Mr. Belmont
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

AK

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5CAW

WASHINGTON 17 FROM CHICAGO 21 7-10

DIRECTOR

ATTENTION ASSISTANT DIRESTOR A. ROSEN.

LOUIS CAMPAGNA, WAS ET AL, BRIBERY, PAROLE MATTERS. RE MY TELEPHONE CONVERSATION FEBRUARY EIGHTEEN LAST WITH ASSISTANT DIRECTOR A. ROSEN. IN ACCORDANCE WITH REQUEST OF USA KERNER THAT PHYSICAL SURVEILLANCE BE PLACED ON CAMPAGNA, GIOE AND DE LUCIA, ~~DISCREET~~ DISCREET INVESTIGATION INSTITUTED THIS DATE TO LOCATE THEM IN ORDER TO BEGIN PHYSICAL SURVEILLANCES. INVESTIGATION TO DATE AT THEIR CHICAGO ~~RESEXX~~ RESIDENCES AND KNOWN HAUNTS HERE NEGATIVE IN SO FAR AS THEIR LOCATION. INVESTIGATION CONTINUING TO LOCATE THEM. BUREAU WILL BE IMMEDIATELY ADVISED WHEN SUBJECTS LOCATED AND SURVEILLANCES INSTITUTED.

RECORDED 15 58-2000-1984

RECEIVED 23 MAR 1 1949 FBI

MC SWAIN

END ACK PLS 61 MAR 11 1949

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 23 1949

TELEMETER

Rec'd 2:30 am NA

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

WASH 15 FROM CHICAGO 23 10-24 PM

DIRECTOR, FBI

ATTENTION ASSISTANT DIRECTOR A. ROSEN

LUIS CAMPAGNA, WAS. ETAL, BRIBERY, PAROLE MATTERS, . AS A RESULT OF DISCREET PRETEXT INQUIRY TODAY IT APPEARS LIKELY THAT SUBJECTS GIOE, DE LUCIA AND CAMPAGNA ARE NOW RESIDING AT THEIR RESPECTIVE CHICAGO RESIDENCES. HOWEVER, CONTINUED SPOT SURVEILLANCES OF THEIR CHICAGO RESIDENCES AND KNOWN HAUNTS FAILS TO DEFINITELY [redacted] PLACE SUBJECTS. SURVEILLANCES OF CHICAGO RESIDENCES AND KNOWN HAUNTS CONTINUING.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP2 AJ/CW

MC SWAIN

61 MAR 11 1949

END AND ACK PLS

SE 8 | 58-2000-1985

RECORDED 115

F B I

23 MAR 1 949

49-XF

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 25 1949

TELEMETER

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

WASH 7 FROM CGO 25 5-45 PM

DIRECTOR, FBI URGENT

ATTENTION ASSISTANT DIRECTOR A. ROSEN

LOUIS CAMPAGNA, WAS, ETAL. BRIBERY PAROLE MATTERS. ~~REQUDXXX~~ RESULTS OF SURVEILLANCES TO DATE DISCUSSED WITH USA ~~OTOXXX~~ OTTO KERNER JR. THIS PM. HE ADVISED THAT IN VIEW OF THE APPARENT INACTIVITY OF THE SUBJECTS THAT THE SURVEILLANCES WOULD NO LONGER BE REQUIRED. ALL SURVEILLANCE ACTIVITY ENDED FIVE THIRTY PM TODAY.

MC SWAIN

END AND ACK PLS

RECORDED - 58 152-2800-1986

F B I

MAR 4 1949

RECEIVED

Memo - Mr. Rosen - Mr. Ladd - 2/28/49 EJM/ad

EX-141

EX-16

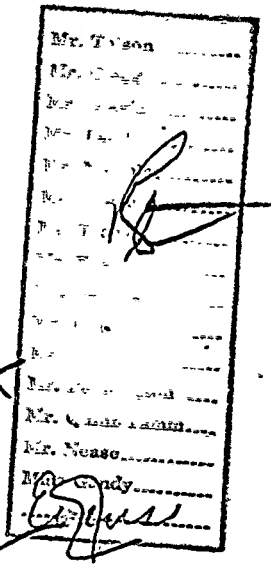
53 MAR 18 1949

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3-15-95 BY SP5 CA/AW

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 21 1949

TELEMETER



ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3-10-82 BY SP5 CAW

WASHINGTON 7 FROM CHICAGO 24 5-33PM AK

DIRECTOR

ATTENTION ASST DIRECTOR A. ROSEN

LOUIS CAMPAGNA, WAS, ETAL, BRIBERY, PAROLE MATTERS. CONTINUED SPOT SURVEILLANCES OF CHICAGO RESIDENCES OF GIOE, DE LUCIA, AND CAMPAGNA, AS WELL AS THEIR KNOWN HAUNTS HERE FAILS TO DEFINITELY PLACE SUBJECTS.

MC SWAIN

END ACK PLS

RECEIVED

RECORDED - 78

58-2000-DUPLICATE

61 MAR 11 1949

19 MAR 4 1949

EX-40

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. LADD

FROM : R. A. ROSEN

SUBJECT: LOUIS CAMPAGNA, ET AL
BRIBERY - PAROLE MATTERS

DATE: 2/21/49

CALL 10:00 A.M.

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

SAC McSwain, Chicago, was advised of the memorandum dated February 16, 1949, from Mr. Peyton Ford concerning the surveillances in the above captioned matter. Mr. McSwain was fully apprised concerning the correspondence with the Department concerning this matter and was instructed to discuss the Departmental instructions with USA Kerner.

CALL 4:00 PM

SAC McSwain subsequently advised that he had discussed the contemplated physical surveillances with USA Kerner and Mr. Kerner emphasized the fact that it was highly undesirable that any of these subjects become aware of the physical surveillances. USA Kerner pointed out that these subjects are presently at liberty under a writ and it would be most embarrassing to the Government if they became aware of any physical surveillances. Mr. McSwain pointed out to USA Kerner that under the circumstances it would be rather difficult to insure a complete coverage and USA Kerner stated that it would be preferable to lose the surveillances if necessary rather than have these surveillances uncovered.

ACTION BEING TAKEN

The Chicago Division is presently endeavoring to locate the subjects for the purpose of handling the physical surveillances in the manner requested by USA Kerner.

G. I. R. - 1

EJM/rh

EX-125
RECORDED - 140 58-2000-1988

MAR 3 1949

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/25/95 BY SP5 alw

53 MAR 25 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

PF:MJH:co

TO : J. Edgar Hoover
Director, Federal Bureau of Investigation

DATE: February 16, 1949

FROM : Peyton Ford
The Assistant to the Attorney General

SUBJECT: Louis Campagna, was., et al.
Bribery; parole matters

G.I.R.-7

Reference is made to your memorandum of February 11, 1949. Although it is realized that the maintenance of a twenty-four-hour physical surveillance over De Lucia, Gioe, and Campagna will require the services of agents who are needed on many urgent matters, it is felt that the implications involved in the case warrant this additional special attention, if United States Attorney Kerner deems it advisable.

It is therefore requested that such a surveillance be maintained for at least a week in accordance with the desires of Mr. Kerner in the matter.

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY 60324/ca

RECORDED - 27

158-2000-1989

34 MAR 8 1949

memo & ltr. dtd. 2/11/49 - R.H.

5 MAR 1 1949

213

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO : MR. LADD

DATE: February 28, 1949

FROM : MR. ROSEN

SUBJECT: LOUIS CAMPAGNA, was, Et Al
Bribery - Parole Matters

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/93 BY SP5 CA/AW

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

PURPOSE

To advise that United States Attorney Kerner, on February 25, 1949, informed SAC McSwain that in view of the apparent inactivity of the subjects surveillances would no longer be required.

DETAILS

It will be recalled that United States Attorney Kerner, on February 11, 1949, advised SAC McSwain that Mr. Peyton Ford of the Department had approved Kerner's requesting the Bureau to maintain a physical surveillance on the three parolees, Paul DeLucia, Gioe, and Campagna, for at least a week, on the basis of somewhat nebulous information obtained that they were associating together and participating in card games with high stakes.

By memorandum dated February 16, 1949, Mr. Peyton Ford advised that, despite the reasons advanced by the Bureau for not handling the surveillance, it was felt that the implications involved in the case warranted this additional special attention (physical surveillances) if United States Attorney Kerner deems it advisable. Before instituting the physical surveillances, Mr. McSwain rediscussed the matter with United States Attorney Kerner, and Mr. Kerner requested that the surveillances be handled in a most discreet manner, inasmuch as the subjects were presently at liberty on a writ and it would be embarrassing to the Government if the surveillances were uncovered. United States Attorney Kerner stated that it would be preferable to lose the surveillance if necessary rather than have the surveillances uncovered.

By wire dated February 24, 1949, the Chicago Office advised that continued spot surveillances of the Chicago residences of the three subjects, as well as their known haunts, had failed to definitely place the subjects.

By wire dated February 25, 1949, the Chicago Office advised that United States Attorney Kerner no longer required the surveillances in view of the apparent inactivity of the subjects.

ACTION

Inasmuch as United States Attorney Kerner has requested the discontinuance of the surveillances, no further action is required and this is submitted for information.

EX-125

RECORDED - 108 | 58-2000-1990

INDEXED - 108

FBI

23 MAR 7 1949

HANDLED BY SPEC. DESK

WMD:DRF

58 MAR 25 1949

COPY:AJH

FEDERAL BUREAU OF INVESTIGATION

UNITED STATES DEPARTMENT OF JUSTICE

Salt Lake City, Utah
March 10, 1949

Director, FBI

~~CONFIDENTIAL~~

Re: AARON SMIKOFF, alias Allen Smiley
FALSELY CLAIMING CITIZENSHIP

Dear Sir:

Confidential Informant [redacted] recently informed SA CURTIS O. LYNUM that the parole of JOHNNY ROSELLI, et al, was "fixed" through JIMMIE UTLEY's contacts with the Parole Board. This information was furnished the Bureau by letter dated March 4, 1949 in the case entitled, "VICE CONDITIONS, LAS VEGAS, NEVADA, RESEARCH MATTER." Copies of this letter were furnished the Los Angeles and Chicago Offices. b7D

On March 9, 1949, [redacted] advised that Subject had asked JIMMIE UTLEY to help him to obtain an acquittal. JIMMIE UTLEY was in Las Vegas on March 6, 7, 8 and 9, 1949, and advised that he could not help SMILEY before the case went to Court. However, he is reported to have stated that he, UTELY, "has" the Chief Probation Officer, and he promised SMILEY that, even if convicted, SMILEY would get only a probationary sentence. UTLEY promised SMILEY that if the Federal Judge who is scheduled to try his case appears to be unfavorable, UTLEY would be able, through the Chief Probation Officer, to have a "friendly" Federal Judge hear the case. b7D

The above is for your information, and further information relative to this matter will be immediately reported.

Very truly yours,

JAY C. NEWMAN
SAC

COL:FR
62-1189
cc: 94-142

cc: Los Angeles (AMSD)

AMSD

RECORDED - 115

EX-103

58-2111-1991
F B I
59 APR 14 1949

ORIGINAL COPY FILED IN

Assistant Attorney General, Alexander M. Campbell, Criminal Division
Director, FBI

March 23, 1949

LOUIS CAIFAGNA, with aliases; ET AL
BRIBERY
PAROLE MATTERS
5-2000-1992

RECORDED - 115

The following information received by this Bureau from an anonymous source is being furnished to you in view of the Department's interest in this case.

According to the anonymous allegation, the parole of subject John Rosselli was "fixed" through contacts with the United States Board of Parole made by James Utley, Los Angeles underworld character. It was further alleged that unidentified criminal leaders in the East were reported to have issued orders that cooperation was to be extended to Utley generally because of his assistance in connection with Rosselli's parole.

No action is being taken by this Bureau relative to these anonymous allegations.

53-2000

CAE:VH:od

Note: Information furnished in this letter was made available by Confidential Informant [redacted] It has been attributed to an anonymous source in order to afford this informant added protection since his position in the underworld is particularly precarious at this time. The information can truthfully be attributed to an anonymous source since [redacted] received it through unknown underworld sources.

b7D

COMMUNICATIONS SECTION
MAILED 13
MAR 30 1949 P.M.
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

RECEIVED-DIVISION
MAR 30 2 41 PM
F B I

Nelson
Clegg
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Tadd
Nichols
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Tracy
Egan
Furnea
Harbo
Mohr
Pennington
Quinn Tamm
Room
Nease
Gandy

53 APR 22 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: March 14, 1949

FROM: SAC, CHICAGO

SUBJECT: LOUIS CAMPAGNA, was, ETAL
BRIBERY PAROLE MATTERS
(Bufile 58-2000)

Reference is made to Salt Lake City letters dated February 25 and March 4, 1949 captioned Vice Conditions, Las Vegas, Nevada, Research Matter reflecting information furnished by [redacted] concerning Johnny Roselli.

b7D

Unless advised to the contrary by the Bureau, no action is contemplated by this office with respect to this matter.

GDR:JMOB

94-343

CC: Los Angeles
CC: Chicago file 58-194

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5A/cs

Memo Atty General Campbell 3/28/49 cae

RECORDED - 115

58-2000-1992

FBI

12 APR 7 1949

EX-106

RECORDED COPY FILED IN

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: March 28, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS COMPAGNA; CHARLES GIOE
BRIBERY; PAROLE MATTERS;
ANTI RACKETEERING; HABEAS CORPUS
PROCEEDINGS

Remylet 1-24-49.

For the information of the Bureau and Chicago Office, on March 16, 1949, the U. S. Attorney for the Northern District of Georgia filed a motion with the Circuit Court of Appeals for the Fifth Circuit for the withdrawal of the typewritten transcript of the record for the purpose of having the same printed.

This motion was granted by the Circuit Court of Appeals, and the U. S. Attorney was permitted to withdraw the typewritten transcript for a period of thirty days.

It is noted that no date has been set by the Circuit Court of Appeals for a hearing on this matter and it is not likely that a date will be set until after such time as the transcript is returned to the Circuit Court of Appeals and the printed brief of the appellant submitted.

DEFERRED RECORDING

This matter is being placed in a pending inactive status in the Atlanta Office. The Bureau and Chicago Office will be advised of all developments in this matter.

cc: Chicago

CLM:eah
58-62

RECORDED - 66 SEP 3

58-2000-1993
F B
37 APR 1 1949

EX-22

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5CA/cw

50 APR 27 1949 67

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Rosen

DATE: April 28, 1949

FROM : C. A. Evans

SUBJECT: LOUIS CAMPAGNA, WAS., ET AL
BRIBERY
PAROLE MATTERS

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Hendon
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Beahn
Miss Gandy

LOUIS V. CAMPAGNA - SUMMARY

There is attached to this memorandum the original and file copy of the brief prepared for possible testimony before a Congressional Committee relative to this case. Since the brief is not now needed for this purpose, it is being forwarded to the Records Section for retention in connection with the file in this case. No indexing in the general Bureau indices of names in this brief is necessary.

58-2000

Attachment

CAE:NHL

Retained per form 4-341 dated 1/8/69

Returned to Records Section ~~ENCLOSURE ON BULKY RAMP~~ Bulky Destroyed 7-7-77 per form 4-341 dated 7-5-77 cdc

INDEXED

6 ENCL

56 MAY 4 1949

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/D/95 BY SP5 cla/aw

55-2000-1994
FBI
94 MAY 2 1949
2-6

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO MR. ROSEN

DATE: 4/27/49

FROM MR. E. J. McCABE

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/81 BY SP5CAW

Call: 10:30 a.m.

SUBJECT: LOUIS CAMPAGNA, was, et al
BRIBERY, PAROLE MATTERS

Mike Horan, of the Department, called to advise that the memorandum he mentioned yesterday regarding the contemplated request of the Bureau to surveille Campagna on a trip from Chicago to Atlanta will not be written. He stated that after a discussion of the merits of the idea, the Department decided it might be too much of a "fishing expedition". Mr. Horan stated that the Department will advise the Parole Board not to grant permission for Campagna to travel to Atlanta and if he desires to consult with his attorney the attorney can come to Chicago.

EJM:DRF

RECORDED - 118

58-2000-1995
F B I

12 MAY 6 1949

61 MAY 18 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. ROSEN

FROM : E. J. McCABE

DATE: April 26, 1949

Call: 3:29 p.m.

SUBJECT: LOUIS CAMPAGNA, was, et al
BRIBERY, PAROLE MATTERS

Mike Horan, of the Department, called and advised that Campagna has requested permission to make a trip to Atlanta to consult with his attorney there who handled his appeal of habeas corpus. Mr. Horan stated he has discussed this with the Parole Board and the USA in Chicago, and they are all suspicious of Campagna's motives. Horan stated he is writing a memo recommending that the Bureau place a surveillance on Campagna from the 29th, when he leaves, until May 7th, when he returns. He stated that the extent of the surveillance with respect to coverage will be left to the Bureau's discretion. He stated he merely wished to forewarn us that the memo is coming.

58-2000

58-2000-1996
F B I
12 MAY 6 1949

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5a/kw

EJM:DRF

SAC, Chicago

May 23, 1949

Director, FBI

LOUIS CAMPAGNA, with aliases, ET AL
DEFENDANT: FAROLE MATTERS

It is desired that the Chicago and Atlanta Divisions advise the Bureau of the current status of appellate action presently pending in this matter.

cc-Atlanta

58-2000

CAE:LS

RECORDED - 25 58-2000-1997

Tolson
Clegg
Glavin
Ladd
Nichols
Rosen
Tracy
Egan
Gurnea
Harbo
Mohr
Pennington
Quinn Tamm
Room
Nease
Candy

COMMUNICATIONS SECTION
MAILED 14
MAY 23 1949 P.M

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: June 1, 1949

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was, etal
BRIBERY
PAROLE MATTERS
Bureau file 58-2000

G. I. R. -8

Rebulet, 5/23/49.

A check of the docket at the U. S. Circuit Court of Appeals, 1220 Lake Shore Drive, Chicago, Illinois, revealed the following cases docketed which have arisen out of the earlier court proceedings in this matter in Chicago:

Circuit Court of Appeals Number	Date Docketed	District Court Number	Notice Filed	District Judge	Title
9709	9/25/48	48C1053	8/16/48	BARNES	USA ex rel LOUIS CAMPAGNA vs THOMAS P. DONOVAN, Marshal.
9710	9/25/48	48C1176	8/20/48	SHAW	USA ex rel LOUIS CAMPAGNA vs U.S. Board of Parole.
9711	9/25/48	48C1177	8/20/48	SHAW	USA ex rel PAUL DE LUCIA vs U.S. Board of Parole.
9712	9/25/48	48C1178	8/20/48	SHAW	USA ex rel CHARLES GIOE vs U.S. Board of Parole. DEFERRED PROCEEDING
9788	12/31/48	48C867	11/23/48	IGOE	USA ex rel PAUL DE LUCIA vs THOMAS P. DONOVAN

Docket No. 9709 is the appeal filed by CAMPAGNA from the decision of Judge BARNES with respect to his ruling on his petition for release from the custody of the U. S. Marshal on a writ of habeas corpus. A date has not yet been set for a hearing in this matter.

58-2000-1998
F B I

RECORDED - 30

17 JUN 15 1949

CES:VLS
58-194

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 2/2/95 BY SP5CAW

63

53 JUN 22 1949

Director, FBI 6/1/49 RE: LOUIS CAMPAGNA, was, etal
BRIBERY, PAROLE MATTERS

Dockets numbers 9710, 9711, and 9712 are appeals by CAMPAGNA, DE LUCIA, and GIOE from Judge SHAW's denial of their motions that the District Court have the right to review the action of the U. S. Board of Parole under the Federal Administrative Act. Mr. JOHN LULINSKI, Assistant United States Attorney, has advised that it was doubtful whether or not WILLIAM SCOTT STEWART, attorney for all subjects, would press for any further action in these three matters before the U. S. Circuit Court of Appeals.

Mr. W. B. KERRICK, Clerk, U. S. Circuit Court of Appeals, advised that on May 16, 1949 permission was received to print the court record on docket number 9788. He stated this is a large printing job (will cost $4,568) and that the printing will be done in the summer and that hearings will be scheduled during the fall term. He anticipated that the cases would not be heard before October 1, 1949.

This office will follow the appellate action in these matters by occasional contact with the United States Attorney's Office and U. S. Circuit Court of Appeals.

IA-1

FEDERAL BUREAU OF INVESTIGATION
INVESTIGATIVE DIVISION

5/2 1949

___ Mr. Rosen	___ Ident. Division
___ Mr. Callan	___ Crime Statistics
___ Mr. McCabe	___ Crime Records
___ Mr. Pennington	___ Records Section
___ Mr. Scott	
___ Mr. Billings	
___ Mr. Caver	___ Mr. Martin
___ Mr. Estep	___ Mr. Nelson
___ Mr. Evans	___ Mr. Penland
___ Mr. Gearty	___ Mr. Price
___ Mr. Johnson	___ Mr. Ryan
___ Mr. Keep	___ Mr. Schmidt
___ Mr. Leggett	___ Mr. Staab
___ Mr. Logue	✓ Mr. RONALDUE
___ Mr. Lorton	Room 7364
___ Miss Wright	___ Send File
___ Miss Harvison	___ Bring file up-to-date
___ Miss Conlon	___ Place on Record
___ Stenographers 5714	___ Place on Record and Return
___ Stenographers 5728	___ Please Handle
___ Typists 5728	

Recall

COURTNEY A. EVANS Room 5714

SUPERVISOR

F-77

FEDERAL BUREAU OF INVESTIGATION
RECORDS SECTION

5/11 1949

____Mr. Clegg	____Mr. Waikart
____Mr. Glavin	____Miss Lint
____Mr. Harbo	
____Mr. Ladd	____Mr. Eames
____Mr. Nichols	____Mr. Donegan
____Mr. Rosen	____Mrs. Conover
____Mr. Tracy	____Mrs. Black
	____Miss Ordiway
____Mr. Cartwright	
____Mr. Callahan	
____Mr. Clark	____Mr. Medler
____Mr. Davidson	____Mr. May
____Mr. Edwards, H. L.	____Miss Pashki
____Mr. Edwards, J. E.	
____Mr. Fletcher	
____Mr. Jackson	____Mr. Seyfarth
____Mr. Jones, M. A.	____Mr. Runaldue
____Mr. Leonard	____Mr. Pittman
____Mr. McCabe, E. J.	
____Mr. McCabe, N. H.	
____Mr. McGuire	____Mr. Brady
____Mr. Mohr	____Mr. Cleaver
____Mr. Nease	____Mrs. Gunther
____Mr. Newman	____Miss Harrington
____Mr. Norman	____Mrs. Kay
____Mr. Renneberger	____Miss McWhirt
____Mr. Trotter	____Miss Mattson
____Mr. _____	____Mrs. Mead
____Mr. _____	____Miss Polly
	____Miss Speers
____See Me	____Mrs. Venable
____Phone Me	____Miss Wolfe
	____M_____
____Please Handle	____M_____
____Note and Return	
____Send File	

Index as a summary only.
No further routing necessary.

G. P. RUNALDUE

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: June 21, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS COMPAGNA; CHARLES GIOE
BRIBERY, PAROLE MATTERS,
ANTI-RACKETEERING, HABEAS CORPUS
PROCEEDINGS

58-2000

Remylet dated March 28, 1949, and Bulet to Chicago dated May 23, 1949.

Assistant U. S. Attorney HARVEY H. TYSINGER, Atlanta, Georgia, was interviewed concerning the present status of the above entitled matter. Mr. TYSINGER stated that the case is still pending in the U. S. Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana, and that the case is presently scheduled to be heard in October, 1949, at Atlanta, Georgia. The exact date has not been set.

The Bureau and the Chicago office will be notified of the decision of the court when rendered. In the meanwhile the Atlanta Division is carrying this case in a pending inactive status.

GHT:EML
58-62

cc: SAC, Chicago

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5A/Cw

RECORDED - 135
158-2000-1999
FBI
37 JUL 28 1949

EBT

52 JUL 8 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: August 15, 1949

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY; PAROLE MATTERS
(Bufile 58-2000)

Remylet 6/1/49.

On August 10, 1949, the docket of the U. S. Circuit Court of Appeals was again checked to determine whether or not additional action had occurred in cases arising out of earlier court proceedings of this matter in Chicago. This check disclosed that in the case of USA ex rel PAUL DeLUCIA vs THOMAS P. DONOVAN (docket number 9788) on July 18, 1949, 50 copies of the printed record of the hearing before U. S. District Judge IGOE had been signed. A date for hearing arguments in this matter has not yet been set by the Circuit Court of Appeals.

There were no additional entries in cases numbered 9709, 10, 11 and 12 set forth in referenced letter.

This office will continue to follow the appellate action in these matters by occasional contact with the USA and the U. S. Circuit Court of Appeals.

CES:lpt
58-194

58-2000-2000
F B I

RECORDED - 109

31 AUG 18 1949

EX-9

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/93 BY SP5A/cw

53 AUG 25 1949

58-2000-2001

RECORDED

Mr. Peyton Ford
The Assistant to the Attorney General

September 2, 1949

Director, FBI

LOUIS CAMPANA, with aliases, ETAL
EXTORTION
PUBLIC MATTERS

There is enclosed herewith a copy of the memorandum from Senator Raymond E. Baldwin, together with a copy of the enclosure thereto. I have acknowledged the Senator's memorandum advising him that this matter was being referred to you since the investigation in the captioned case was instituted at the request of the Department.

Enclosure

RECEIVED DIRECTOR
SEP 2 7 25 PM '49
U.S. DEPT. OF JUSTICE

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Gandy

58-2000
CAE:MG
SEP 23 1949

August 24, 1949

United States Senate

Re: Case of Louis Compagna

Letter of August 19 from Mr. C. W. Bettcher, Pres.
Eastern Machine Screw Corp.
Bruman and Barclay Sts.
New Haven, Conn.

Respectfully referred to

Mr. J. Edgar Hoover
Director
~~Federal Bureau of Investigation~~

with thanks for such favorable consideration as the communication herewith submitted warrants, and for a report thereon, in duplicate to accompany return of inclosure.

By direction of

Raymond ~~W.~~ Baldwin U. S. S.
Cather~~ine~~ ~~W.~~ Flynn
Executive Secretary

ENCLOSURE ATTACHED

RECORDED - 52

INDEXED - 52

58-2000-2001

FBI

37 AUG 30 1949

EX-1

ALL FBI INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5a/gw

COPY

THE EASTERN MACHINE SCREW CORPORATION

Truman and Barclay Streets

New Haven, Connecticut

Zone 6

August 19, 1949

Hon. Raymond E. Baldwin
Senate Office Building
Washington, D.C.

Dear Senator Baldwin:

When Ellsworth B. Foote was in Congress he was trying to follow for me the investigation concerning the parole of Louis Compagna and other gangsters.

You will recall that there was an investigation started in Chicago in September 1947 and considerable mention in the press regarding this investigation at that time. Also, there was an investigation by the FBI and Mr. Foote was following this thru Mr. Peyton Ford, Assistant to the Attorney General. They advised him in February 1948 that the FBI and the Grand Jury were still investigating as to why they were pardoned. Since that time I have been unable to obtain any information. It looks as if this thing had been hushed up.

Can you let me know what the latest developments have been?

Yours very truly,

THE EASTERN MACHINE SCREW CORP.
By: /s/ C. W. Bottcher

C. W. Bottcher.
President.

CWB:EJF

3D195 SP5-4(C)

September 2, 1949

Honorable Raymond E. Baldwin
United States Senate
Washington, D. C.

My dear Senator:

I have received your memorandum of August 24, 1949, relative to Louis Campagna (the correct spelling of this name) enclosing a letter from Mr. C. W. Bottcher, President of the Eastern Machine Screw Corporation, New Haven, Connecticut.

Inasmuch as the investigation in the Campagna case was instituted at the request of the Department of Justice, I am referring your communication to Mr. Peyton Ford, the Assistant to the Attorney General. The letter from Mr. Bottcher which you enclosed with your memorandum is being returned to you herewith.

With expressions of my highest esteem and best regards,

Sincerely yours,

J. Edgar Hoover

Enclosure

RECORDED - INDEXED
SEP 2 7 25 PM '49
U.S. DEPT. OF JUSTICE
F B I

RECORDS SECTION:

File 76-15469 should be consolidated into file 58-2000.

RECORDED 58-2000-2002
F B I
70 SEP 8 1949

CAE:KB

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Candy

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: September 13, 1949

FROM : SAC, CHICAGO

SUBJECT: LOUIS CAMPAGNA, was, Et al
BRIBERY - PAROLE MATTERS
(Bureau file 58-2000)

According to an article in the Chicago Daily "Sun-Times" for September 1, 1949, PRESTON T. TUCKER, President of the now inactive Tucker Corporation, Chicago, and recently indicted formail fraud and SEC violations, stated that threats against his life had been relayed to him through a former official of the Tucker Corporation.

The former official, who was not identified in the article, reportedly advised the newspaper that some members of the "Capone Syndicate" had made the threats because they had lost money on franchises for the Tucker car. The former official is reported to have stated that a group of "shady characters" demanded that he help them to locate TUCKER. He advised the newspaper that a number of dealerships in Cook County (Illinois) were sold to "syndicate leaders through front men." Among the syndicate members who bought Tucker franchises, according to the former official, were LOUIS CAMPAGNA, PAUL RICCA, CHARLES GIOE and PHILLIP D'ANDREA.

The Chicago office has received no further information regarding this matter and it is being furnished to the Bureau for information purposes. No investigation will be conducted by this office unless advised to the contrary by the Bureau.

DEFERRED RECORDING

RWM:LL
58-194
CC: 62-3802

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3-15-82 BY SP5a/ckj

Memo Rosen to Ladd 10-5-49

RECORDED - 91

INDEXED - 91

58-2000-2003

F B I

6 SEP 19 1949

62-80618-149

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: September 15, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS (7) COMPAGNA; CHARLES (6) GIOE
BRIBERY; PAROLE MATTERS;
ANTI RACKETEERING; HABEAS CORPUS
PROCEEDINGS

Remylet dated June 21, 1949.

Assistant U. S. Attorney HARVEY H. TYSINGER, Atlanta, Georgia, has informed this office that COMPAGNA and CHARLES GIOE have filed a motion with the Clerk of the United States Circuit Court of Appeals, Fifth Circuit, to dismiss the individuals' appeal from the ruling of the Honorable E. MARVIN UNDERWOOD, U. S. District Judge, Atlanta, Georgia, by which he ordered the release of these subjects on Writ of Habeas Corpus.

A copy of the appellees' motion to dismiss was furnished by Mr. TYSINGER and is being sent to the Bureau as an enclosure with this letter for the Bureau's information.

The Bureau will be kept advised as to the action taken on this motion to dismiss. P.

GHT:EML
58-62

Enclosure.

RECORDED - 128

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DATE 3/2/95 BY SP5A/aw

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U. S. ATTORNEY
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Referred to.....

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 12715

WILLIAM H. HIATT, Warden United States Penitentiary, Atlanta, Georgia Appellant, vs. **LOUIS COMPAGNA and CHARLES GIOE,** Appellees.	Appeal from the United States District Court for the Northern District of Georgia. Honorable E. Marvin Underwood, Judge Presiding.

MOTION TO DISMISS

M. NEIL ANDREWS,
22 Marietta Street Bldg.,
Atlanta, Georgia,
WM. SCOTT STEWART,
77 W. Washington St.,
Chicago, Illinois,
Counsel for Appellees.

BARNARD & MILLER, 33 S. Market St., Chicago 6, FRanklin 2-0562

58-300-3004

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 12715

WILLIAM H. HIATT, Warden United States Penitentiary, Atlanta, Georgia Appellant, vs. LOUIS COMPAGNA and CHARLES GIOE, Appellees.	Appeal from the United States District Court for the Northern District of Georgia. Honorable E. Marvin Underwood, Judge Presiding.

MOTION TO DISMISS

Now come Louis Compagna and Charles Gioe appellees in the above entitled cause, pursuant to notice, and move to dismiss this appeal for the reason of this case has become moot. By reason of subsequent events, herein shown by affidavit, no real controversy exists between the parties. Nothing could be gained by further prosecution of this appeal as is shown by the authorities submitted herewith.

LOUIS COMPAGNA,
CHARLES GIOE.

M. NEIL ANDREWS,
WM. SCOTT STEWART,
Counsel for Appellees.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 12715

WILLIAM H. HIATT, Warden United States Penitentiary, Atlanta, Georgia Appellant, vs. **LOUIS COMPAGNA and CHARLES GIOE,** Appellees.	Appeal from the United States District Court for the Northern District of Georgia. Honorable E. Marvin Underwood, Judge Presiding.

AFFIDAVIT OF COUNSEL.

Wm. Scott Stewart, counsel for Louis Compagna and Charles Gioe appellees in the above entitled cause being first sworn states that the above appeal taken by the Government seeks to reverse the action of the trial judge in discharging these appellees by virtue of a petition for the writ of habeas corpus.

As appears from the record herein Compagna and Gioe were arrested in Chicago, Illinois, upon warrants issued by the United States Board of Parole. They were returned to Atlanta Penitentiary as parole violators. While in prison

they filed this writ before Judge Underwood. After a hearing the District Court decided that the warrant was void. *Hiatt* v. *Compagna,* 82 Fed. Supp. 295.

During the time that Compagna and Gioe were lodged in the penitentiary under the warrants they were regarded and treated as convicts in the service of their original sentences.

After they were discharged by Judge Underwood they returned to their respective homes in the Chicago district and reported themselves to the local parole authorities. They were informed that no reports were to be required.

Subsequently the Parole Board reconsidered the matter and ordered that Compagna and Gioe resume the status of parolees. Each parolee received the following letter:

UNITED STATES DISTRICT COURT
Office of the Probation Officer
Northern District of Illinois
April 4, 1949

I am in receipt of a letter from Mr. George G. Killinger Chairman, U.S. Board of Parole, advising that after considering the matter for some time with reference to your parole status since your release, the board has come to the conclusion that you are regarded as in the parole status and that monthly reports be required.

In your case it will be necessary to bring your reports up to date from June 16, 1948 to March 1, 1949.

Would suggest that you get in touch with * * * your probation officer upon receipt of this letter, so there will be no delay in submitting your reports in compliance with the request of the Parole Board. These reports must be in Washington not later than April 8, 1949.

Very truly yours,
(Signed) CHARLES W. FISHER,
Chief U.S. Probation Officer.

After the order of the Parole Board, Compagna and Gioe complied by submitting the required reports. Such reports have been approved and accepted. Appellees have complied with the rules and regulations and have accepted the status so imposed upon them since their discharge by Judge Underwood.

Therefore the fact is that there has been a change of custody since this appeal was perfected. Appellees are no longer in the custody of appellant. No real controversy exists between the parties and this case has become moot.

WM. SCOTT STEWART.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

Subscribed and sworn to
before me September 2, 1949.
PATRICIA WISE,
Notary Public (SEAL)

SUGGESTIONS.

I.

The proceedings for review of an order or judgment in a habeas corpus proceeding may be dismissed if ground therefor appears.

39 C.J.S., Sec. 118, p. 730.
Citing among others
Adams v. *Clark,* 100 F. 2d 135.

II.

Frequently an appeal is dismissed on the ground that the only questions involved are or have become moot or academic. * * *

39 C.J.S., Sec. 118, p. 730.

III.

Where a reversal would not be effectual nor beneficial to the complaining party, the judgment of the trial court may be affirmed.

5 C.J.S., Sec. 1852, p. 1336.

IV.

Notwithstanding an irregularity in the proceedings in the lower court, the judgment may be affirmed where, by reason of the happening of subsequent events, no real controversy any longer exists between the parties and, on account of the questions involved having become abstract, a new trial would be of no advantage to appellant or plaintiff in error.

5 C.J.S., Sec. 1852, p. 1337.

V.

"On a habeas corpus, where the personal liberty of the citizen is involved, our decision should be made upon the actual status of the case. This record discloses that the term of the second sentence of the appellee has expired, and, although he did not service the full period of his imprisonment by reason of his discharge by the court below, the time which he lawfully should have served has now expired. To direct a reversal of the order of the court below would be to do a vain thing. * * *

The only formal order we can now enter is an order dismissing the appeal, in view of the expiration of the second sentence of the appellee pending the consideration of this appeal by this court. *United States* v. *Mills,* 11 App. D. C. 510, 511.

As the appeal must be dismissed, it is now so ordered.

Harris v. *Lang,* 7 L.R.A. (N.S.) 124, 132, 27 App. D. C. 84, 93, 7 Ann. Cas. 141.

VI.

In habeas corpus proceeding by prisoner against penitentiary warden, wherein prisoner's sentence expired through a good time allowance pending appeal from order remanding prisoner to the custody, and prisoner was released on parole for the remainder of his maximum sentence, appeal must be dismissed on ground that prisoner was no longer in warden's custody or control.

Van Meter v. *Sanford,* 99 F. 2d 511.

VII.

Where petitioner had been discharged from custody after appeal from order denying petition for writ of habeas corpus was lodged in Circuit Court of Appeals, appeal was dismissed as "moot".

Odell v. *Sanford,* 128 F. 2d 616.

VIII.

Where question in habeas corpus proceeding was whether, as contended by prisoner, term expired on April 2, 1941, or on January 26, 1942, as contended by warden, and appeal from order discharging writ came on for hearing on January 28, 1942, so that regardless of which contention was correct, prisoner's term had expired and prisoner had been released from custody, appeal was rendered "moot" and would be dismissed.

Pyron v. *Squier,* 129 F. 2d 310.

IX.

Where petitioner for writ of habeas corpus was granted a conditional release pending appeal from judgment denying the writ, the case became "moot" and appeal was dismissed.

Weber v. *Hunter,* 137 F. 2d 926.

X.

Where petitioner was released from penitentiary because of his good conduct while his appeal from judgment denying his petition for writ of habeas corpus was pending,

petitioner's contention of his wrongful detention became moot and appeal was dismissed.

Bledsoe v. *Johnston,* 164 F. 2d 481.

XI.

Where a prisoner is enlarged on parole after he presents his petition, the effect is to do away with any basis for the habeas corpus.

Stallings v. *Splain,* 253 U.S. 339.
Wales v. *Whitney,* 114 U.S. 564, 570.
McNalley v. *Hill,* 293 U.S. 131, 138.
Re Callicot, Federal Case No. 2,323.
Ex Parte Herrera, 137 Pac. (2) 82, 83.

Respectfully submitted,

M. NEIL ANDREWS,

WM. SCOTT STEWART,
Counsel for Appellees.

SAC, Chicago

September 28, 1949

Director, FBI

LOUIS CAMPAGNA, was. et al
BRIBERY; PAROLE MATTERS

Reurlet September 6, 1949.

It is desired that you secure copies of briefs filed in this case in the Circuit Court of Appeals at Chicago and forward them to the Bureau.

RECORDED - 4

58-2000 - 2005

CAE:bls

COMMUNICATIONS SECTION
MAILED 12
SEP 28 1949 P.M.
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Traeu
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Winterrowd
Tele. Room

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: September 6, 1949

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was. et al
BRIBERY; PAROLE MATTERS
(Bufile 58-2000)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12-19-75 BY SP5 CAW

Remylet August 15, 1949.

On August 30, 1949 Assistant United States Attorney JOHN LULINSKI filed a brief in the Circuit Court of Appeals, Chicago, Illinois, in the case of USA ex rel PAUL DE LUCIA vs THOMAS P. DONOVAN (docket number 9788). In this brief LULINSKI contended that Judge IGOE interfered with an administrative process of the parole board, and stated that the latter has authority by statute to return any parolee believed to have violated his parole.

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LULINSKI's brief also argued that Judge IGOE did not allow the Government the three days granted by law in which to answer a petition for writ of habeas corpus.

RECORDED - 4 58-2000-2005

DE LUCIA's counsel has until October 3, 1949 to file answer to the appeal. This office will continue to follow the appellate action in these and related matters.

INDEXED - 4

Letter to Chicago 9-2-49 cHF

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October 3, 1949

Honorable Raymond E. Baldwin
United States Senate
Washington, D. C.

My dear Senator:

This is in response to the recent memorandum of your Executive Secretary enclosing a letter from Mr. C. H. Bettcher of New Haven, Connecticut, in which Mr. Bettcher inquired as to the results of investigation into the paroles of Louis Campagna, et al, of Chicago, Illinois.

Extensive investigation and hearings by a subcommittee of the House of Representatives, a federal grand jury, and this Department, have established no irregularity in the granting of these paroles.

Yours sincerely,

PEYTON FORD

Peyton Ford
The Assistant to the Attorney General

ALL FBI INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3-15-95 BY SP2 AC

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: October 10, 1949

FROM : SAC, CHICAGO

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY; PAROLE MATTERS
(Bufile 58-2000)

2-1

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3-15-95 BY SP5 a/Cw

Rebulet dated September 28, 1949.

In compliance with relet copies of all briefs filed with the United States Circuit Court of Appeals in matters arising out of this case have been obtained and are enclosed herewith.

Mr. KENNETH J. CARRICK, clerk of the United States Court of Appeals, Seventh Circuit, 1212 Lake Shore Drive, Chicago, made these briefs available. These briefs are set forth below under the headings of the cases to which they refer:

Circuit Court of Appeals, Case No. 9788

1. Transcript of Record filed July 10, 1949.
2. Brief and Argument for Respondent-Appellant filed August 30, 1949.
3. Motion to Dismiss filed September 6, 1949.
4. Respondent-Appellant's Objections to Motion to Dismiss filed September 15, 1949.
5. Brief and Argument for Petitioner-Appellee filed October 3, 1949.

The above exhibits are in connection with the case entitled "The United States of America, ex rel. PAUL DeLUCIA, Petitioner-Appellee, vs. THOMAS P. O'DONOVAN, United States Marshal, Respondent-Appellant.

Circuit Court of Appeals, Case No. 9709
(United States of America, ex rel. LOUIS COMPAGNA, Petitioner-Appellant, vs. THOMAS P. O'DONOVAN, United States Marshal, Respondent-Appellee)

Bulky destroyed per form 4-341 dated 5/9/69

1. Motion to Dismiss filed September 6, 1949.
2. Objections to Motion to Dismiss filed September 15, 1949. (According to Mr. CARRICK, there is a letter on file with the United States Circuit Court of Appeals, advising that the same objections to the dismissal of this case were embodied in their objections to Case Nos. 9710-11-12, and for that reason this Motion to Dismiss in this particular case (9709) actually does not exist. The Court of Appeals will include as part of the file in case No. 9709 a copy of the objections to dismiss in the cases numbered 9710-11-12.)

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58-194
Enclosures

58-2004-2007

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INDEXED - 28

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Letter to Director, FBI
Chicago, Illinois

RE: LOUIS CAMPAGNA, was., et al

Circuit Court of Appeals Case Nos. 9710, 9711, 9712
(The United States of America, ex rel. LOUIS COMPAGNA, PAUL DeLUCIA and CHARLES GIOE, Petitioners-Appellants, vs. United States Board of Parole, Respondent-Appellee)

1. Motion to Dismiss filed September 6, 1949.
2. Objections to Motion to Dismiss filed September 15, 1949.

Mr. CARRICK advised that the only case on which the Government and defendants appeared to be proceeding is in the Case No. 9788. He stated that the Petitioner-Appellee (DeLUCIA) has been denied the Motion to Dismiss and that a hearing on the merits of the case has been tentatively scheduled for November 9, 1949.

The Bureau will be kept informed of developments in this matter.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : R. T. HARBO

DATE: Oct. 12, 1949

FROM : D. J. Parsons

SUBJECT: LOUIS CAMPAGNA,
was. et al.
BRIBERY,
PAROLE MATTER

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5 alm

Tolson
Ladd
Clegg
Glavin
Nichols
Rosen
Tracy
Harbo
Mohr
Tele. Room
Nease
Gandy

58-2000

There is attached the file which has been maintained in the Laboratory in connection with the above captioned matter. It is desired that this file be maintained as an enclosure behind the main file in the Records Section.

1 Attachment

1 ENCL ENCLOSURE BEHIND FILE
71 OCT 17 1949

58-2000 - 2008
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57 OCT 14 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. A. ROSEN

FROM : F. L. PRICE

DATE: 10/5/49

CALL 4:10 P.M.

SUBJECT: LOUIS CAMPAGNA, WAS, ET AL
BRIBERY; PAROLE MATTERS

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Kendon
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

SAC McSwain was telephonically instructed that the Chicago Office should, if it has not already done so, bring to the attention of U. S. Attorney Kerner the written notices which appeared in the Chicago Daily Times dated September 1, 1949, and which is discussed in Chicago letter to the Bureau dated September 13, 1949.

FLP/mjp/rh

58-2000

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58-2000-2009

EX-119

OCT 18

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: October 19, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS COMPAGNA; CHARLES GIOE
BRIBERY; PAROLE MATTERS;
ANTI RACKETEERING; HABEAS
CORPUS PROCEEDINGS

Remylet 9-15-49.

Assistant U. S. Attorney HARVEY H. TYSINGER, Atlanta, Georgia, advises that there has been no change in the status of this case since the letter of reference. The Bureau will be advised of action taken on the motion to dismiss.

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58-62

58-2000

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EX-33

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: November 3, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS COMPAGNA; CHARLES GICE
BRIBERY; PAROLE MATTERS;
ANTI RACKETEERING; HABEAS
CORPUS PROCEEDINGS

62-1
58-1

Information has been obtained from Assistant U. S. Attorney HARVEY H. TYSINGER, Atlanta, Georgia, that the above entitled case was argued before the U. S. Circuit Court of Appeals, 5th Circuit, at Atlanta, Georgia, on October 18, 1949. No decision has yet been rendered. It will be noted that the matter argued before the U. S. Circuit Court of Appeals was a motion to dismiss, as set forth in previous correspondence.

The Bureau will be promptly advised when a decision has been rendered.

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EX-33

56 NOV 17 1949

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. D. M. LADD

DATE: 11/16/49

FROM : A. ROSEN

SUBJECT: LOUIS CAMPAGNA, ET AL
BRIBERY: PAROLE MATTERS

Tolson
Ladd
Clegg
Glavin
Nichols
Rosen
Tracy
Harbo
Mohr
Tele. Room
Nease
Candy

With reference to the attached wire, the continuity of the action is as follows: Louis Campagna, Charles Dioe [redacted] were judged by the Government to be in violation of their parole in that they had falsified their financial interests in statements made to the Probation Officer and otherstatements given to the Probation Officers.

After being so adjudged at Atlanta they filed a writ of habeas corpus in the District Court stating that the finding of the Department of Justice, that they had violated their parole, was unjustified and unwarranted and motivated by political considerations. The District Court ruled in their favor and they were released.

The Government was not satisfied with this decision and took the case up to the Court of Appeals, claiming that the District Court was without jurisdiction to hear the matter.

The instant information, therefore, from Atlanta is furnished to us pursuant to our request after an item was observed in the newspapers indicating that a decision had been rendered by the Circuit Court of Appeals at New Orleans in this case. Inasmuch as the Appeal for the Government in this case was initiated and handled by the USA at Atlanta he was requested to make available a copy of the Court's judgment in the matter.

The decision therefore can be concluded to mean that the Department of Justice did have a right to revoke the paroles of the subjects and to make such a finding and that, therefore, the subjects should be held in violation of their parole. The decision in effect finds that an administrative finding can not be set aside by a District Court unless such an administrative finding was capricious.

AR:WW

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FBI

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3-15-95 BY SP5 a/aw

Mr. Tolson	
Mr. Ladd	✓
Mr. Clegg	
Mr. Glavin	
Mr. Nichols	
Mr. Rosen	
Mr. Tracy	
Mr. Harbo	
Mr. Mohr	
Tele. Room	
Mr. Nease	
Miss Gandy	

FBI, ATLANTA 11-16-49 10-05 AM EML

DIRECTOR URGENT

LOUIS CAMPAGNA, WAS, ET AL, BRIBERY, PAROLE MATTERS. REURTEL FIFTEENTH INSTANT AND MYLET OF SAME DATE. DECISION CIRCUIT COURT OF APPEALS AS FOLLOWS. QUOTE. THE JUDGMENTS APPEALED FROM ARE REVERSED AND THE APPELLES ARE DIRECTED TO BE REMANDED TO THE CUSTODY OF THE WARDEN, WITH LEAVE TO THE APPLICANTS, IF SO ADVISED, TO ENLARGE THEIR PLEADINGS SO AS TO PRESENT, IF THEY CAN, A CASE OF TOTAL NULLITY OF THE ORDERS REVOKING THEIR PAROLES UNDER WHICH THEY ARE NOW HELD. UNQUOTE. USA, ATLANTA, FEELS CASE WILL MOST LIKELY GO TO SUPREME COURT.

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BILLS

END

PLS ACK

10-07AM OK FBI WASH DC CCW

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11/16/49 memo dupt.

AR cc: Mr. Rosen
Mr. Evans

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: November 15, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS CONRAD A; CHARLES GIOS
D ILLEY; F NOLE MATHIS;
ANTI RACKETEERING; HABEAS
CORPUS PROCEEDINGS

Remylet 11-3-49.

AUSA HARVEY H. THOMPSON today informed this office that the U. S. Circuit Court of Appeals, 5th Circuit, rendered an opinion November 10, 1949, in the above entitled case. The Circuit Court of Appeals decision is quoted as follows:

"The judgments appealed from are reversed and the appellees are directed to be remanded to the custody of the Warden, with leave to the applicants, if so advised, to enlarge their pleadings so as to present, if they can, a case of total nullity of the orders revoking their paroles under which they are now held."

AUSA THOMPSON stated that while he has not received any official notification, he anticipates that the subjects will carry their case to the Supreme Court is possible. In view of the likelihood of additional Court proceedings this case will be temporarily left active pending developments.

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GHT:fg

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EX - 8

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. LADD

FROM : R. A. ROSEN

DATE: November 17, 1949

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY
PAROLE MATTERS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5CAL/CW

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95-1

Tolson
Ladd
Clegg
Glavin
Nichols
Rosen
Tracy
Harbo
Mohr
Tele. Room
Nease
Gandy

PURPOSE:

To advise that the Fifth Circuit Court of Appeals, New Orleans, has reversed a decision of the United States District Court at Atlanta and ordered subjects Campagna and Charles Gioe remanded to the custody of the Warden at the Atlanta Penitentiary. Campagna and Gioe successfully attained their release from Atlanta Penitentiary after they had been imprisoned as parole violators on writs of habeas corpus filed in the United States District Court at Atlanta on September 2, 1948. Campagna and Gioe have twenty days in which to file a petition of certiorari to bring this case before the Supreme Court.

BACKGROUND:

Louis Campagna and four co-subjects, who have been described as ex-Capone gangsters, were released on parole on August 13, 1947. They had at the time of their parole served just over one-third of their ten year prison sentences which had been imposed by the United States District Court, New York City, after their convictions for violation of the Anti-Racketeering Statute. Shortly after subjects were paroled, Fred E. Busbey, then a Republican Congressman from Illinois, became interested in the case and advised the Attorney General that he, Busbey, had been informed that there was an indication of bribery in the granting of paroles. The Attorney General requested the Bureau to conduct a full investigation. This investigation did not disclose any criminal irregularity in the granting of the paroles. Copies of all reports in this investigation were furnished to the Attorney General.

ACTION TAKEN TO REVOKE PAROLES:

During the course of the Bureau's investigation information was developed indicating that statements made by subjects to their parole officers were incorrect, particularly in relation to their financial interests. Information developed in the Bureau's investigation was furnished by the Department to the United States Board of Parole.

Subject Paul de Lucia was arrested in Chicago by the United States Marshal on June 16, 1948, on the basis of a parole violator warrant issued by the United States Board of Parole. He was released on the same date pursuant to a writ of

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INDEXED

37 NOV 22 1949

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habeas corpus filed in the United States District Court, Chicago. The government entered an appeal from this decision of the District Court and this appeal is scheduled for hearing in the Seventh Circuit Court of Appeals during the fall term.

Subjects Campagna and Gioe were taken into custody on parole violators warrants by the United States Marshal, Chicago, on July 23, 1948. They were transported to the United States Penitentiary at Atlanta. On September 2, 1948, writs of habeas corpus in behalf of Campagna and Gioe were filed in the United States District Court, Atlanta. This court sustained these writs and on December 4, 1948, ordered Campagna and Gioe released. The government entered an immediate appeal from this decision and the District Court fixed bond for Campagna and Gioe at $5000. The decision of the Fifth Circuit Court of Appeals on November 10, 1949, reversed only the decision of the United States District Court at Atlanta. The appeal from the decision of the District Court in Chicago freeing subject de Lucia from a writ of habeas corpus is presently pending in the Seventh Circuit Court of Appeals.

The Board of Parole found that the facts did not justify the revocation of the parole of subject John Roselli. No action was taken to revoke the parole of subject Philip d'Andrea because he was in exceptionally poor health.

EFFECT OF DECISION BY THE FIFTH CIRCUIT COURT:

The decision of the Fifth Circuit Court of Appeals in this case was decided by a split court of two to one. The majority opinion citing as precedent Bowers vs. Deshong, 103 Federal Second 434; Fox vs. Sanford, 123 Federal Second 334 and U. S. vs. Bare, 141 Federal Second 480 held that habeas corpus did not lie to test judicially whether a parole violation has occurred; that habeas corpus was not available to test the suffiency of information of parole violation to justify the parole board's warrant; and that the court should not by habeas corpus interrupt the procedure of the parole board as prescribed by statute. Judge Waller in his dissent held in part that revocation of parole in the case was predicated to some extent on newspaper publicity.

United States Attorney Mundy at Atlanta has advised that subjects Campagna and Gioe have twenty days in which to file a petition for certiorari to bring this case before the Supreme Court. They are presently at liberty on $5000 cash bond as fixed by the United States District Court at Atlanta and the United States Attorney stated he could take no action to cause a cancellation of this bond until after the time in which subjects may petition for certiorari has expired. The United States Attorney further indicated that subjects will probably file such petitions for certiorari and if they do so the mandate of the Circuit Court of Appeals will not be returned to the District Court at Atlanta immediately.

Memorandum for Mr. Ladd

ACTION:

The Atlanta Division is forwarding the the Bureau a photostatic copy of the printed opinion of the Fifth Circuit Court of Appeals. The Atlanta Division has been instructed to follow the appellate proceedings in this case most closely and to advise the Bureau promptly of all developments.

NOVEMBER 15, 1949

SAC, ATLANTA ROUTINE

LOUIS CAMPAGNA, WAS, ETAL, BRIBERY, PAROLE MATTERS. PRESS DISPATCH REFLECTS FIFTH CIRCUIT COURT OF APPEALS REVERSED DECISION OF DISTRICT COURT, ATLANTA, IN THIS CASE. SUTEL DETAILS.

HOOVER

CAE:mfb
58-2000

cc - Chicago (by mail)

RECORDED - 70 58-2000-2016

EX-128 31 NOV 17 1949

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Gandy

NOV 30 1949

NOV 15 1949

FBI WASHINGTON DC 11-15-49 7-24 PM EJ

SAC, ATLANTA ROUTINE

LOUIS CAMPAGNA, WAS, ETAL, BRIBERY, PAROLE MATTERS. PRESS DISPATCH REFLECTS FIFTH CIRCUIT COURT OF APPEALS REVERSED DECISION OF DISTRICT COURT, ATLANTA, IN THIS CASE. SUTEL DETAILS.

HOOVER

END

ACK PLS

OK FBI AT RJS

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. LADD

DATE: November 25, 1949

FROM : A. ROSEN

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY
PAROLE MATTERS

66056

Tolson
Ladd
Clegg
Glavin
Nichols
Rosen
Tracy
Harbo
Mohr
Tele. Room
Nease
Gandy

PURPOSE:

To advise that oral arguements in the Government's appeal from the District Court's decision at Chicago freeing subject Paul de Lucia on a writ of habeas corpus following his arrest as a parole violator have been heard by the Seventh Circuit Court of Appeals. The Court of Appeals did not give any indication as to when a decision in this matter might be handed down.

BACKGROUND:

The Bureau at the request of the Department conducted an extensive investigation into the facts surrounding the parole of the five subjects of this case who have been described as ex-Capone gangsters. While this investigation did not disclose any criminal irregularity in the granting of the paroles, following the completion of the Bureau's investigation, the Department which had been furnished copies of all reports made available information developed to the United States Board of Parole. Thereafter subject de Lucia was arrested by the United States Marshal, Chicago, on June 16, 1948, on the basis of a parole violator warrant issued by the United States Board of Parole. He was released on the same date pursuant to a writ of habeas corpus filed in the United States District Court, Chicago. Subjects Louis Campagna and Charles Gioe were arrested as parole violators by the United States Marshal, Chicago, on July 23, 1948. They were transported to the United States Penitentiary, Atlanta, and thereafter freed on writs of habeas corpus by the United States District Court, Atlanta, on December 4, 1948.

APPELLATE ACTION:

The decision of the United States District Court at Atlanta freeing subjects Campagna and Gioe was reversed by the Fifth Circuit Court of Appeals, New Orleans, on November 10, 1949. Campagna and Gioe were ordered remanded to the custody of the Warden of the Atlanta Penitentiary.

The Government also entered an appeal from the decision of the District Court of Chicago freeing subject de Lucia on writ of habeas corpus. Oral arguements were heard by the Seventh Circuit Court of Appeals in this proceeding on November 9, 1949, but the Court did not indicate when a decision might be handed down.

58-2000

CAE:ph

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FUG & SUPP

Mr. Ladd

66057

ACTION:

The Chicago and Atlanta Divisions have been instructed to follow appellate proceedings in this matter closely and to inform the Bureau of all developments.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: November 17, 1969

FROM : SAC, Atlanta

SUBJECT: LOUIS CAMPAGNA, WAS., ET AL
BRIBERY; PAROLE MATTERS
BUFILE 58-2000

Attention: ASSISTANT DIRECTOR A. ROSEN

Attached hereto is the decision of the appeal from the District Court of the United States for the Northern District of Georgia for the U.S. Circuit Court of Appeals, Fifth District, at New Orleans, Louisiana, #12715.

This is being forwarded pursuant to Bureau request.

Enclosure - 1 (AIR MAIL SPECIAL DELIVERY)

JCB:pfb
58-62

ENCLOSURE ATTACHED

RECEIVED

EX-3

RECEIVED

DEC 6

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 12715

WILLIAM H. HIATT, Warden, United States Penitentiary, Atlanta, Georgia,

Appellant,

versus

LOUIS COMPAGNA and CHARLES GIOE,

Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia.

(November 10, 1949.)

Before HOLMES, WALLER, and SIBLEY,
Circuit Judges.

SIBLEY, Circuit Judge: Appellees Compagna and Gioe were convicted, together with others, in the Southern District of New York and each received a sentence of ten years imprisonment, affirmed UNITED STATES v. COMPAGNA, et al., 146 F. 2d 524, certiorari denied, 324 U. S.

867. Having served one-third of their sentences they were placed on parole August 13, 1947. Unfavorable newspaper publicity followed, and an investigation was had by a committee of Congress of the operations of the Parole Board and particularly of this case. The Board members who granted these paroles were out of office, and the then members testified they knew of no ground to revoke them. The committee, however, reported, among other things, that the Board had agreed to take definite action by June 19, 1948, on the committee's request that these paroles be revoked. On July 21, 1948, Judge Rogers, one of the three Board members, issued warrants in the usual form reciting that "reliable information has been presented to the undersigned member of this Board that the said paroled prisoner named in this warrant has violated the conditions of his parole, and the said paroled prisoner is hereby declared to be a fugitive from justice"; and ordering his arrest and return to the penitentiary. Both parolees were promptly arrested and brought to the Atlanta Penitentiary. Each on September 2, 1948, filed a lengthy application for habeas corpus, attacking the validity of their trial and sentence; and attacking the warrants issued by Judge Rogers because of the Congressional enquiry and the testimony therein of each Board member that there had been no breach of parole. The applications further alleged there had not since been any breach of parole and Judge Rogers had no reliable information of any; that the Board had appointed a hearing for September 8, 1948, but had announced no counsel would be heard. The prayers were that the Court declare the conviction and warrants to be void and the Board without jurisdiction; and alternatively that the Board be

ordered to return the parolees to their home in Chicago where they were arrested, and give them a hearing there according to the Administrative Procedure Act, with counsel and witnesses present and a reporter furnished by the Board or paid by applicants. The applications set out the grounds which the Board had notified each applicant would be investigated as justifying the revocation of his parole. On September 20, 1948, the applications were amended to allege that two members of the Board, not including Judge Rogers, had in Atlanta on September 8 conducted a hearing in which applicants denied the charges made against them and were cross examined on them, a Court reporter taking notes, but that no other evidence was introduced and representation by counsel was denied, and the Board refused to comply with the Administrative Procedure Act; and that the matter was continued and referred to Washington.

The only respondent named is the Warden of the Atlanta Penitentiary, who is not a member of the Board. He answered that he was holding the applicants for habeas corpus under their original sentences, and under the warrants of Judge Rogers which he said were valid; that the Administrative Procedure Act had no application, but the parole system was a thing *sui generis*, administered by the discretion of the Board and exempt from judicial review by the language of the Administrative Procedure Act; and that the conduct of the Board is not reviewable by habeas corpus, parole being a matter of grace and not a legal right.

The responses were traversed, habeas corpus writs issued, and a full hearing was had on the two petitions

together. Interrogatories of like tenor were propounded to Judge Rogers, and to the other two members of the Board, one of whom was appointed since the Congressional investigation. Judge Rogers was away from home and made no answers. Chairman Killinger answered that counsel had asked to meet with the Board but had been refused because that procedure was not required by the Parole Statute and was not followed by the Board; that he was advised that the Administrative Procedure Act is inapplicable to the Board; that in reply to counsel's request he had written an exhibited letter, enclosing a copy of the Board's Rules and Regulations, and giving assurance that only conduct since parole would be considered; that the Board would be glad to confer with counsel at its office in Washington or consider any pertinent information in behalf of the parolees, but it had never been the Board's policy to admit counsel to its deliberations or when it interviews the prisoner; that the procedure of a criminal trial was not necessary to a determination of the question whether the welfare of society would be promoted by the granting, revocation, or modification of a parole. It concluded: "To sum up, it is our position that a formal hearing of the kind you seek is not provided for by the statute. We shall, however, be glad to have you submit in writing, or in person at our headquarters, any material or information bearing on these cases." He further testified that all appearances of prisoners before the Board are stenographically reported, running into hundreds at every meeting of the Board, the notes are transcribed in Washington and each case thereafter separately considered by the Board members, so that some delay is inevitable; but that there would be no unnecessary delay

in deciding the cases of applicants. Several interrogatories he declined to answer, and the Board's files he refused to produce, because they involved matters then pending before the Board for decision. Board member Monkiewicz answered to the same effect. No effort was made to force further answers.

The district judge declined for want of proof to hold invalid the sentences, which were attacked as based on perjured testimony knowingly used, and on a conviction for a conspiracy as made in New York, but really made, if at all, in Chicago. Moreover, Revised Title 28, Sec. 2255, requires that such an attack be presented to the court which tried the case.

The district judge apparently thought the Administrative Procedure Act, 5 U. S. C. A. Sec. 1001, and following, has no application to the procedures of the Parole Board in granting paroles, revoking, or modifying them, though he did not expressly so rule. It has never been thought applicable by the Board or the Attorney General who appoints its members and approves its rules. The full dress procedure it requires would render it practically impossible for the Board to handle its business. A prisoner sentenced to the penitentiary is turned over by the court to the executive, namely the Attorney General, to have the sentence executed. That the term may be shortened by good conduct, or that the imprisonment may be ameliorated by serving it outside the prison walls on parole (See ANDERSON v. CORALL, 263 U. S. 193, 196) is a legislative grace and not a thing of right. The legislature may affix such conditions and provide such administration as it will. Courts have no function, except

as the statutes give them power. As respects parole, the original statutes, as well as the revision now of force, bristle with discretion given the Board, and are silent about court interference. Revised Title 18, Sec. 4202, provides that certain classes of prisoners "may be released on parole". Section 4203, prescribing no sort of hearing, and leaving it to the "opinion of the Board", says "the Board may in its discretion authorize the release of such prisoner on parole", under conditions fixed "in the discretion of the Board", he remaining "in the legal custody and under the control of the Attorney General". Section 4205 provides: "A warrant for the retaking of any United States prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced." Section 4206 requires designated officers to execute the warrant "by taking such prisoner and returning him to the custody of the Attorney General", that is, to the prison. Section 4207 is: "A prisoner retaken upon a warrant issued by the Board of Parole, shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board. The Board may then, or at any time in its discretion, revoke the order of parole and terminate such parole or modify the terms and conditions thereof." There is nothing in the present statute, of force since September 1, 1948, requiring that the warrant be based on "reliable information" as stated in the former Title 18, Section 717. It is very evident that the whole matter of paroles is left to the informed discretion of the Board. Court action is not made a part of it. The Administrative Procedure Act, in authorizing court review of the acts of the agencies

which it governs, as to them excludes such action when "(1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion." 5 U. S. C. A. Sec. 1009. Certainly no review of what the Board is doing or has done can be undertaken by habeas corpus where the Board is not a party, and no such directions can be given it as these applications pray for.

The district judge, however, held that the uncontradicted testimony of the two applicants was that Judge Rogers could have had no "reliable information" of parole violation, for there was no violation, and his warrants, issued in August, 1948, were void, ignoring the change in the statute effective September 1, 1948, and that the Warden could not hold the prisoners though the Board had already interviewed them and had under advisement the revocation of their paroles. On December 4, 1948, he gave judgment for the discharge of the applicants from custody after fifteen days, unless within that time the Board or a member becomes possessed of reliable information of parole violation during the fifteen days and a new warrant is issued.

Within the fifteen days the Board rendered an order revoking the paroles, and certification thereof was made to the Warden. He made a motion to reconsider the judgment and presented this order to the court, and asserted that he now holds custody, not under the warrants of Judge Rogers, but under the order of the Board revoking the paroles. This motion was entertained and a show-cause order granted. Without further evidence the motion was denied on the ground that, "the revocations of parole were based on illegal Parole Violator Warrants and were

issued without fair hearings and in my opinion are invalid." The only basis for saying there was no fair hearing is this recital in the judgment: "On what grounds or on what evidence, if any, other than the mere revocations, is not shown, but the Court and petitioners are still left in the darkness which shrouded the habeas corpus trials in which the members of the Board declined to even state what violations of the parole were charged and indicated that no hearings would be granted petitioner other than the 'appearances' they had had before the Board. These 'appearances' fall far short of the fair hearing which the law contemplates." Appeals are taken from both judgments.

1. The district judge incorrectly states that the Board declined to state what violations of parole were charged. At the time of arrest each prisoner was notified in writing of the charges, three against Compagna and five against Gioe; and each exhibited his notice in his original pleading. If the warrants were irregular, they served to bring the parolees before the Board, which has a continuous and exclusive jurisdiction over them in respect of their paroles. They knew the charges against them, and were given the "appearance" which the statute says shall be afforded them. The law does not provide for any other "hearing". Irregularity in the arrest of an alien does not invalidate deportation proceedings otherwise conformable to law. UNITED STATES ex rel. BILOKUMSKY v. TOD, 263 U. S. 149, 158; nor in general does an unlawful arrest prevent a court from trying one on a valid charge of which it has jurisdiction; 22 C. J. S., Criminal Law, § 144; 14 Am. Jur., Criminal Law, §219. Parole revocation is in-

formal and discretionary, and we see no need of starting afresh with a new warrant, if after affording due "appearance" the Board is satisfied that parole ought to be revoked, and has revoked it. The warrant has become unimportant.

2. The Chairman, Dr. Killinger, was not a Board member when the Congressional enquiry was made. None of the present members had anything to do with the grant of the paroles then under enquiry. They are under no incapacity to do their duty. The Chairman by letter offered to let counsel come before the full Board in Washington and present any material or information bearing on the cases, though he declined to have a full scale trial. This was not unfair. The refusal to answer some interrogatories was due to the belief, we think well grounded, that the court had no part in the Board's deliberations about the paroles. The requirements as to procedure in the Administrative Procedure Act have no application to the Parole Board. Its procedure is fixed by a later statute, Revised Title 18, Chapter 311, Parole. We are aware that in FLEMING v. TATE, 156 F. 2d 848, it was held that the statute, then 18 U. S. C. A. Sec. 719, in stating that a paroled prisoner returned to custody "shall be given an opportunity to appear before said board of parole", meant he should have an effective hearing, including assistance of counsel, and the long practice otherwise was unlawful. The decision would seem to invalidate on habeas corpus a vast number of parole revocations. Congress, in revising the parole law, Revised Title 18, Sec. 4207, changed the wording to read: "A prisoner retaken upon a warrant issued by the Board of Parole, shall

be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board." This change cuts deeply into the idea that the appearance is to be a trial. An examiner may conduct it now, and it would seem that the taking of the testimony of the prisoner, and perhaps his witnesses, is alone contemplated. The Chairman's formal offer to counsel that he appear before the Board in person or in writing and present what he desired, following the appearance in person of the prisoners before two members of the Board who heard and preserved the record of what they had to say, we think is a sufficient opportunity to appear. We think the district court erred in holding the orders revoking those paroles are nullities, not justifying the Warden in holding the prisoners.

3. When ANDERSON v. CORALL, 263 U. S. 193, was decided, the Warden of a penitentiary was always a member of its board of parole, and he was specifically authorized to issue a warrant for a parole violator. He was a proper person to defend an attack on the board by habeas corpus. Under the present law the Warden has no part in parole matters, knows nothing about what the Board does in Washington, and is in no position to explain or defend its proceedings. The use of habeas corpus against the Warden to reach a wrong in the Board's procedure, if there be such, is not to be encouraged. In BOWERS v. DISHONG, MARSHAL, 103 F. 2d 464, this Court held that habeas corpus would not lie to test judicially whether parole violation had occurred. Again in FOX v. SANFORD, 123 F. 2d 334, we held habeas corpus was not available to test the sufficiency of information of parole viola-

tion to justify the Board's warrant. The Sixth Circuit, in UNITED STATES v. BARC, 141 F. 2d 480, held that a court should not by habeas corpus interrupt the procedure by the Board which the statute prescribes. The Fourth Circuit, in UNITED STATES v. NICHOLSON, 78 F. 2d 468, held that the remedy for the Board's failure to give a proper appearance before it is not habeas corpus, but a direct proceeding in mandamus against the Board in the District of Columbia. A similar ruling was made in UNITED STATES v. DILLARD, 102 F. 2d 94. If a revocation of a parole can ever be attacked collaterally by habeas corpus against the Warden, it ought to be nullified only on plain evidence and a full hearing. The district court here held that the warrant was invalid and that all that followed was void, and did not try at all the Warden's pleading presenting the orders of revocation, but hastily condemned them on the further ground that the hearing was unfair, and released the prisoners from the Warden's custody.

The judgments appealed from are reversed and the appellees are directed to be remanded to the custody of the Warden, with leave to the applicants, if so advised, to enlarge their pleadings so as to present, if they can, a case of total nullity of the orders revoking their paroles under which they are now held.

WALLER, Circuit Judge, dissenting:

In my study of this case the following viewpoints have developed:

1. The Appellees were lawfully paroled.

2. Between the dates of their parole and their re-arrest and reincarceration, they had committed no violation of the conditions of their parole.

3. That the Parole Board, neither at the time of the issuance of the warrant declaring the parolees to have violated the conditions of the parole and to be fugitives from justice, nor at the time of revocation of parole, had any "reliable information", or information of any kind, that the parolees had violated the conditions of parole.

4. That the provisions of the statute requiring the Board, after the issuance of a warrant and before revocation of parole, to afford parolees an opportunity to appear before the Board, were intended to require the Board to comply with the Constitutional prohibition against the deprivation of liberty without an opportunity to be heard, and the appearance allowed parolees in this case afforded no such opportunity to be heard as the law and the Constitution contemplate.

'5. That one who has rightfully earned and lawfully achieved parole has a status—call it what you will—which he has the right to defend and of which he cannot be deprived except by due process of law, to be afforded either by the Board or, upon its failure, by the courts.

6. Neither adverse newspaper criticism of the granting of parole or a demand or request by a sub-committee of the Committee on Expenditures in the Executive Department of Congress can lawfully supplant the requirement of the statute for "reliable information of violation of parole".

7. That the Parole Board cannot rightfully revoke a parole lawfully granted without cause or grounds for such revocation and the failure of the Board to acquaint either the parolees or the Court below with any grounds for the revocation of the parole should be taken as proof not only that there *were* no such grounds but also should be taken as a deprivation of liberty without due process.

8. The case must be judged by the law as it existed July 1, 1948, or at the time of the issuance of the warrants for the arrest, and not by the New Judicial Code of September 1, 1948.

9. The fact that a criminal trial may be lawful despite the fact that the defendant was taken on an invalid warrant of arrest, as analogized in the majority opinion, seems inapt here. The trial in a criminal case is on an indictment or information whereby, if conviction results, the defendant may be deprived of his liberty. It is the indictment or information that informs the defendant of the charges and what he shall be expected to meet. In a revocation of parole it is the warrant of arrest that deprives him of his liberty and that should acquaint him of the thing with which he is charged.

10. Neither newspapers, sub-committees, political repercussions, whims, or capriciousness, singly or collectively, without more, justifies the incarceration or reincarceration of an individual longer than it is reasonably necessary to afford him a full and fair hearing on charges adduced against him.

11. Notwithstanding the pronouncement of the Board to the sub-committee that it, like Pilate, found no fault in the parolees since their release, and notwithstanding the refusal of the Board members to answer interrogatories or to divluge, either to the parolees or to the lower Court, any reliable information as to any violation of parole, these men have been cast back into custody from which no relief can come if the Board is above the law.

The facts, as found by the Court below, are without any contradiction in the evidence and I think that its judgment should be affirmed.

A True copy:
Teste:

.....
Clerk of the United States Court of
Appeals for the Fifth Circuit.

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

CC-150

To: COMMUNICATIONS SECTION.

Transmit the following message to:

DECEMBER 5, 1949

SAC, ATLANTA

LOUIS CAMPAGNA, WAS., ET AL, BRIBERY, PAROLE MATTERS. SUTEL WHETHER SUBJECTS CAMPAGNA AND GIOE HAVE PERFECTED APPEAL IN THIS CASE.

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Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Miss Gandy

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

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DEC 5 1949

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FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 5 1949

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SAC, ATLANTA

LOUIS CAMPAGNA, WAS., ET AL, BRIBERY, PAROLE MATTERXXX MATTERS. SUTEL WHETHER SUBJECTS CAMPAGNA AND GIOE HAVE PERFECTED APPEAL IN THIS CASE.

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ALL INFORMATION CONTAINED
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DATE 3-10-95 BY SP5 a/aw

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

FROM : SAC, Chicago

DATE: December 1, 1949

SUBJECT: LOUIS CAMPAGNA, was. et al
BRIBERY
PAROLE MATTERS
(Bufile 58-2000)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5CA/CW

Remylet dated October 10, 1949.

On November 29, 1949, a check of the docket at the U. S. Circuit Court of Appeals, Chicago, revealed the following additional information:

Circuit Court of Appeals Case No. 9788

(U.S. ex rel. PAUL DeLUCIA, Petitioner-Appellee vs. THOMAS P. O'DONOVAN, United States Marshal, Respondent-Appellant)

9-28-49 Court entered order denying motion to dismiss without prejudice.

11-9-49 Oral arguments heard and case taken under advisement.

KENNETH J. CARRICK, Clerk of the United States Circuit Court of Appeals, Chicago, advised that he anticipates a final ruling by the court within two weeks.

In re: Circuit Court of Appeals Cases:

No. 9709 U.S. ex rel. LOUIS CAMPAGNA, Petitioner-Appellant vs THOMAS P. O'DONOVAN, Respondent-Appellee
9710 U.S. ex rel. L. CAMPAGNA vs. U. S. Board of Parole
9711 U.S. ex rel. PAUL DeLUCIA vs. U. S. Board of Parole
9712 U.S. ex rel. CHARLES GIOE vs. U. S. Board of Parole

the docket check revealed that on September 28, 1949, the court formally entered an order denying motion to dismiss without prejudice.

DEFERRED RECORDING

These cases have not been discussed with United States Attorney OTTO H. KERNER nor his assistant, JOHN P. LULINSKI, who presented the Government arguments before the Court of Appeals.

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58-194

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EX-51

5 DEC 13 1949

Letter to Director, FBI

RE: LOUIS CAMPAGNA, was. et al
BRIBERY
PAROLE MATTERS
(Bufile 58-2000)

Recent press reports indicate that on November 12, 1949, the U. S. Fifth Circuit Court of Appeals at New Orleans, reversed the decision of U. S. District Court Judge E. MARVIN UNDERWOOD, Atlanta, Georgia. Judge UNDERWOOD earlier had ordered that CAMPAGNA and GIOE be released from the U.S. Penitentiary at Atlanta. As a result, the press in their stories state that these two will be returned to prison.

Mrs. KATHERINE QUINLAN, Secretary to Assistant United States Attorney LULINSKI, advised that inasmuch as the decision was the result of the court action at Atlanta, Mr. LULINSKI is awaiting the U. S. Attorney there (Atlanta) to initiate action for their reincarceration.

The Bureau will be kept advised of Chicago developments in cases relating to this matter.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. LADD

FROM : Mr. ROSEN

DATE: December 7, 1949

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY - PAROLE MATTERS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/3/95 BY SP2 AC/CM

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

PURPOSE:

To advise that attorneys for subjects Campagna and Charles Gioe have filed a petition for rehearing with the 5th Circuit Court of Appeals, New Orleans. The 5th Circuit Court of Appeals, on November 10, 1949, reversed a decision by the District Court, Atlanta, Georgia freeing Campagna and Gioe on writs of habeas corpus.

FACTS:

Campagna and four co-subjects who have been described as ex-Capone gangsters were released on parole on August 13, 1947 after having served just over one-third of their ten year prison sentences which had been imposed by the U. S. District Court, New York, after their convictions for violation of the Anti-Racketeering Statute. Shortly after subjects were paroled Fred E. Busbey, then a Republican Congressman from Illinois, became interested in the case and advised the Attorney General that he, Busbey, had been informed that there had been an indication of bribery in the granting of these paroles. At the request of the Attorney General the Bureau conducted a full investigation which did not disclose any criminal irregularity in the granting of the paroles. Copies of all reports were furnished to the Attorney General. During the course of the Bureau's investigation, however, information was developed indicating that statements made by subjects to their parole officers were incorrect. The Department made available to the U. S. Board of Parole this information developed during the Bureau's investigation. Thereafter, the Board of Parole revoked the paroles of subjects Campagna, Gioe and Paul deLucia. deLucia contested his arrest as a parole violator in a writ of habeas corpus filed in the U. S. District Court, Chicago on June 16, 1948. The District Court granted this writ and an appeal taken by the Government is presently pending in the 7th Circuit Court of Appeals.

Campagna and Gioe were freed on writs of habeas corpus granted by the District Court, Atlanta, on December 4, 1948. The Government appealed this Order to the 5th Circuit Court of Appeals which reversed the decision of the District Court on November 10, 1949. It is in connection with this decision that Campagna and Gioe have filed a petition for a rehearing.

INDEXED
RECORDED 10403
58-2000-2021

ACTION:

This is submitted for your information. The Atlanta and New Orleans Divisions have been instructed to follow closely appellate action in this case and to advise the Bureau promptly of all developments.

58-2000
CAE:FCF

DEC 16 1949
138

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 6 - 1949

TELETYPE

Mr. Tolson
Mr. Ladd
Mr. Clegg
Mr. Glavin
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Harbo
Mr. Mohr
Tele. Room
Miss Nease
Miss Sandy

FBI ATLANTA 12-6-49 6-20 PM EST

DIRECTOR, FBI URGENT

LOUIS CAMPAGNA, WAS, ETAL, BRIBERY, PAROLE MATTERS. REBUTEL DECEMBER FIFTH, FORTYNINE. ATTORNEYS FOR CAMPAGNA AND GIOE HAVE FILED A PETITION FOR REHEARING WITH THE U. S. COURT OF APPEALS, FOR THE FIFTH CIRCUIT. NO INFORMATION AVAILABLE ATLANTA AS TO WHETHER REHEARING WILL BE GRANTED. NEW ORLEANS OFFICE BEING REQUESTED TO FOLLOW THIS MATTER. COPY OF THE PETITION WAS FURNISHED USA, ATLANTA, DECEMBER FIRST, FORTYNINE, COPY OBTAINED AND BEING FORWARDED BUREAU. AUSA TYSINGER, WHO REGULARLY HANDLES HABEAS CORPUS MATTERS, PRESENTLY IN ROME, GEORGIA AT TERM OF COURT, AND IS NOT AWARE OF THE CONTENTS OF PETITION. COPY OF PETITION HAS BEEN FORWARDED BY USA, ATLANTA, TO MR. GOTTSCHALL, OF THE DEPARTMENT, WHO PARTICIPATED IN THE HEARING IN DISTRI DISTRICT COURT IN ATLANTA IN OCTOBER, NINETEEN FORTYEIGHT.

BILLS

END

CORRS PLS FIFTH WORD IN TITLE SHOULD READ " BRIBERY"

6-24 PM OK FBI WA LIR

RECORDED - 103 58-2000-2022
EX-110
37 DEC 8 1949

cc: Mr. Evans

No. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: December 7, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS CAMPAGNA, was, et al
BRIBERY; PAROLE MATTERS
(Bufile #58-2000)

ReButel 12-5-49 and my tel 12-6-49.

For the information of the New Orleans Office, LOUIS CAMPAGNA and CHARLES GIOE, who have been identified as members of the CAPONE gang, were convicted in United States District Court for the Southern District of New York, in December of 1943, and sentenced to terms of ten years imprisonment for violation of the Anti-Racketeering Act. On August 13, 1947 they were released on parole, and remained at large until July 23, 1948, when they were arrested on Parole Violator warrants.

CAMPAGNA and GIOE filed habeas corpus proceedings against W. H. HIATT, Warden, U. S. Penitentiary, Atlanta, Georgia, and on December 4, 1948, Judge E. MARVIN UNDERWOOD, U. S. District Court, Northern District of Georgia, handed down an opinion sustaining writ of habeas corpus for CAMPAGNA and GIOE.

This order was appealed by the Government, on behalf of W. H. HIATT, Warden, U. S. Penitentiary, Atlanta, Georgia, and on October 18, 1949, the case was argued before the United States Circuit Court of Appeals, Fifth Circuit, Atlanta, Georgia, and on November 10, 1949 the Fifth Circuit reversed the judgments of the U. S. District Court for the Northern District of Georgia, and ordered CAMPAGNA and GIOE to be remanded to the custody of the Warden, "with leave to the applicants, if so advised, to enlarge their pleadings so as to present, if they can, a case of total nullity of the orders revoking their paroles under which they are now held". This was in Case #12715 of the U. S. Circuit Court of Appeals.

On December 1, 1949, the United States Attorney's Office, Northern District of Georgia, Atlanta, Georgia, received, in printed form, a copy of the Petition for Rehearing which has been filed in instant case. The United States Attorney, Atlanta, has, however, forwarded a copy of the petition to Mr. GOTTSCHALL, Department of Justice, [redacted], D. C., who participated in the hearing, in Atlanta, during October of 1948; and the United States Attorney advises that the motions and answers on behalf of the Warden will be filed by Mr. GOTTSCHALL.

EX-87

RECORDED - 72 58-2000-2023

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Enclosure - 1 Copy of Petition for Rehearing

c/c - New Orleans

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EX-87

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Atlanta, 58-62

The New Orleans Office is requested to check with the Clerk, U. S. Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, and advise the Bureau and the Atlanta Office of the disposition of the petition mentioned above. In the event this matter is set for re-hearing, the Bureau and the Atlanta Office should be immediately notified.

58-2006-103

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

U. S. ATTORNEY
RECEIVED
DEC 1 1949

No. 12715

WILLIAM H. HIATT, Warden,
United States Penitentiary, Atlanta, Georgia,
Appellant,

vs.

LOUIS COMPAGNA and CHARLES GIOE,
Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia.

Honorable E. Marvin Underwood, District Judge.

Before HOLMES, WALLER and SIBLEY,
Circuit Judges.

PETITION FOR REHEARING

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Brief and Suggestions Appended

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 12715

WILLIAM H. HIATT, Warden,
United States Penitentiary, Atlanta, Georgia,
Appellant,

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Appeal from the District Court of the United States for the Northern District of Georgia.
Honorable E. Marvin Underwood, District Judge.

Before HOLMES, WALLER and SIBLEY,
Circuit Judges.

PETITION FOR REHEARING

MAY IT PLEASE THE COURT:

Your Honors have inadvertently misapprehended the record, Opinion pp. 2, 4, 9, when Your Honors assert that

none of the present members of the Board granted the paroles. See the transcript of the Congressional hearings.

Again Your Honors misapprehended the record when the Court said pp. 4, 8, 9, 10, that at the time of the arrest each prisoner was notified of the charges. Although the referrals were filed with the warrants in the office of the Warden they were not revealed until September 2, 1948. The correspondence between the Chairman and counsel took place in July and August. The prisoners were questioned by the Board members in prison on September 8.

The letter sent by Dr. Killinger, R. 352, and the rules of the Board, our brief p. 61, disclose that the Board assumes the power to revoke in the absence of misbehavior, upon the ground that continuation of the parole status is considered to be incompatible with the public welfare.

Your Honors have inadvertently failed to apply a correct construction of the statutes in holding that the Board is vested with such power. We again call attention to our brief p. 63, where authorities are collected to the effect that rules adopted out of harmony with the will of Congress are mere nullities. The mistake made by the Board, as to the extent of its power, is one of law and may be reviewed in habeas corpus. The erroneous holding here that the Board has such discretion is contradicted by the authorities, including *Clark* v. *Suprenant, Ex parte Urbanowicz, Fleming* v. *Tate* and *Moore* v. *White,* cited in our brief.

Your Honors have failed to follow the statutes when it is held that the warrant is unimportant. This will be seen upon another examination of the cases cited by us to the effect that the warrant is jurisdictional. See again *Moore* v. *White,* our brief p. 21.

The cases cited by Your Honors were distinguished from the one at bar by Judge Underwood as pointed out in our brief, pp. 33, 34, 35.

Upon re-examination Your Honors will find no difference between the old and the new statute. Both require a violation before the Board may institute proceedings.

Your Honors inadvertently approached the question as to whether Judge Underwood should have reconsidered from the wrong viewpoint, as if the burden were upon us. Upon re-examination Your Honors will perceive that the Government was asking for a new trial. It was up to respondent to make a showing. No affidavit was submitted. No motion to amend the return. No supplemental pleading submitted. Judge Underwood exercised his discretion and based his action upon the record. Under the settled law Your Honors should not override that ruling unless the Government is able to show an abuse of discretion. In the absence of a proper showing below, the Government is in no position to do this. Really the respondent was asking for a new trial. If upon rehearing Your Honors will apply the familiar rules to such a situation it will be seen that Judge Underwood must be upheld.

Your Honors mention the fact that the Board is not a party and also refer to a case where mandamus is indicated. Upon rehearing, if Your Honors agree that the Board exceeded its powers it will be seen that habeas corpus is the proper remedy. It is traditional that the custodian must exhibit his authority in such cases.

No mention is made of our motion to dismiss. We trust that upon rehearing Your Honors will again consider our point.

If Your Honors, upon rehearing, agree with the trial

court, of course the judgment will be affirmed, but if it is to be remanded, we submit that the order of remand will bear further consideration. Particularly as to the burden of proof and what must be shown.

We respectfully pray for a rehearing.

Respectfully submitted,

WM. SCOTT STEWART,
Counsel for Appellees.

A. WALTON NALL,
Of Counsel.

Certificate.

I, Wm. Scott Stewart, counsel for the above-named petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

WM. SCOTT STEWART,
Counsel for Petitioners.

APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 12715

WILLIAM H. HIATT, Warden,
United States Penitentiary, Atlanta, Georgia,
Appellant,

vs.

LOUIS COMPAGNA and CHARLES GIOE,
Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia.

Honorable E. Marvin Underwood, District Judge.

Before HOLMES, WALLER and SIBLEY,
Circuit Judges.

BRIEF AND SUGGESTIONS ON BEHALF OF APPELLEES

MAY IT PLEASE THE COURT:

Misapprehension of the Record

We quote from the majority Opinion pp. 2, 4, 9:

"The Board members who granted these paroles were out of office, and the then members testified they knew of no ground to revoke them."

"Interrogatories of like tenor were propounded to

> Judge Rogers, and to the other two members of the Board, one of whom was appointed since the Congressional investigation."
>
> "2. The Chairman, Dr. Killinger, was not a Board member when the Congressional inquiry was made. None of the present members had anything to do with the grant of the paroles then under inquiry."

The error of the Court will be shown by an examination of the volume entitled:

> "Hearings before a Subcommittee of the Committee on Expenditures in the Executive Department, House of Representatives, 80th Congress, Second Session."

This printed transcript of the evidence heard by the Congressmen is before this Court as an original exhibit R. 421. It is a brown paper covered volume of 938 pages. It will be noticed from the testimony given by Judge Rogers, and that given by Mr. Monkiewicz that these gentlemen were members of the Parole Board at the time the paroles were issued and during the proceedings below. Dr. Killinger was appointed chairman during the time of the Congressional hearings and testified before that body. Our brief p. 17, Government brief, p. 3.

We realize that a mistake on the part of Your Honors, concerning whether Judge Rogers was on the Board, or not, when the paroles were granted, does not matter, when it comes to decision of the material facts and the law applicable. However, we assume that Your Honors prefer accuracy. We deem it our duty to suggest corrections. A close study of the record, on rehearing is required, if the case presented below is to be fully understood. It will be observed that the writ of habeas corpus was granted under the doctrine that there is apparent exceptional circumstances showing the need of the remedy. *Bowen* v. *Johnston*, 306 U.S. 19, 27.

We again quote from the majority opinion pp. 4, 8, 9, 10:

> "Chairman Killinger answers * * * that the Board would be glad to confer with counsel at its office in Washington or consider any pertinent information in behalf of the parolees."
>
> "*At the time of arrest* each prisoner was notified in writing of the charges, three against Compagna and five against Gioe."
>
> "The Chairman by letter offered to let counsel come before the full Board in Washington and present any material or information bearing on the cases."
>
> "The Chairman's formal offer to counsel that he appear before the Board in person or in writing and present what he desired, *following* the appearance in person of the prisoners before two members of the Board who heard and preserved the record of what they had to say, we think is a sufficient opportunity to appear." (Emphasis added.)

The errors and misapprehensions of the Court will be perceived when the record is again examined. After it is noticed that the letter referred to, R. 350, was written on August 6, 1948, by Dr. Killinger to Counsel. The so-called hearing was on September 8, 1948. R. 178. This letter to counsel was in answer to a letter, R. 348, addressed to the Board on July 26, 1948. R. 58. The referral, R. 59, is also dated July 21, 1948. But Your Honors have overlooked the fact that the referrals were concealed from the petitioners until just the day before they filed their petitions for habeas corpus, on September 2, 1948.

So, if Your Honors will again examine these letters, it will be seen that counsel asked for particulars of the charge on July 27. When Dr. Killinger answered, on August 6, R. 350, there was nothing said in his letter about the nature of the charges. The invitation to appear before the Board in Washington and to submit material, in the absence of any charge, was without any value. The parolees had

already been before the Congressional Committee, and had been examined and cross-examined, in considerable detail, concerning their conduct. This testimony had been given in the presence of a member of the Parole Board. The Parole Board had been furnished with a transcript of this testimony. Upon rehearing, Your Honors will perceive that if Counsel had responded to the letter and had traveled to Washington, counsel could have submitted nothing further than that already sworn to by the parolees before the Congressmen. See Board rule 2.16, our brief, p. 61. To this day the parolees and counsel are in no better position. Unless someone will tell these petitioners why it is thought that these paroles should be revoked, they can not answer any differently than they did to the Congressmen. All we could ever do was to enter general denials, and assert that there had been no violation. If the paroles were revoked because the Board believed that such action was best for the welfare of society, there is nothing that we could have submitted to the Board that the Board did not already have. In fact, if this turns out to be the ground of revocation, the Board could not very well furnish any specification of charges. There would be none. A hearing would do us no good either, if the Board has the power to act for the welfare of society in the absence of any misbehavior.

Misapprehension as to the Power of the Board.

Upon rehearing, Your Honors will perceive that this entire case boils itself down to that very question of power. If the Board has the power to act for the welfare of society, regardless of any violation, in the matter of revocation, as claimed by Dr. Killinger in his letter, R. 350, and as provided in the Board rules, our brief, p. 61, there is nothing much for us to litigate. In such event the dis-

cretion of the Board would be beyond review by the courts. What is best for society is a matter of opinion. We would have no way of demonstrating that the Board was in error. We are afraid that the majority opinion is to be understood as affirming such power in the Board. If such be the case, these petitioners are compelled to either convince Your Honors that a mistake has been made here, or return to prison—unless the present holding be reversed. The opportunity to show that the revocation are nullities, in the face of such a holding here, is of no practical value. The stakes are high, and we trust that Your Honors will be patient with our effort to bring about a change. If these petitioners are returned, they are worse off than if they had never been granted parole. They lose the good time earned before they came out.

Your Honors are in error in the following, which we again repeat from the opinion, p. 8,

> "*At the time of arrest* each prisoner was notified in writing of the charges, three against Compagna and five against Gioe." (Emphasis added.)

If we understand the majority opinion, it is not necessary that there be any connection between the warrant and the revocation. Your Honors have held that the warrant is unimportant, and merely secures custody,—that the revocation is good, even if it be based upon something beside that upon which the warrant was issued. Of course such a holding is correct if it be true that the Board has a discretion to be exercised to the end that a parole might be revoked if in its opinion the welfare of society is served by such action. If this discretion may be exercised against the continued parole of one who has not committed any breach of the law and has not violated, there would be no occasion to specify any charge. The warrant in such case would not be based upon any misbehavior and it could

only serve to secure custody. In such case after custody is secured, of course it would be unimportant. It is our hope that consideration of our petition and further reflection will cause Your Honors to abandon any such interpretation of the statutes involved.

Your Honors must agree, on rehearing, that the charges upon which the revocation are grounded must come under one of three heads, *i.e.*, (1) those upon which the warrant and referral are based, (2) charges of misbehavior not included in the warrant and referral, or (3) the revocation is grounded on no claim of misbehavior, but is made because the Board reached the decision that such action was best for the welfare of society.

If the revocation is based upon those listed under head (2), the prisoners have had no hearing at all upon them. The record shows all of the matters upon which each prisoner was questioned, R. 167 to 245. No record was preserved about "what they had to say" about charges under (2), because to this day the prisoners have never heard of them. When we say they have had no hearing as to (2), we mean, not even that which Your Honors hold to be sufficient in the way of a hearing. Of course there could be no connection between the warrant and charges under (2).

If the revocation be based upon charges under heading (1), there is enough in the record for Your Honors to perceive that the revocation has no legal basis. We request Your Honors to again examine the referrals, R. 26, 35, 52, in the light of the holding of the majority here that "each prisoner was notified in writing of the charges." These referrals are fully set out in our brief, p. 9. The Government attorneys stated their position on p. 14, of their brief, and we replied on p. 25.

1. Failure to reveal source of monies used in settlement of internal revenue tax, when questioned before a legally constituted body.

This was shown to relate to matters settled before the parole was granted, and properly ruled out of the case. *Ex parte Urbanowicz,* our brief, pp. 22, 23.

2. Failure to conduct himself honorably.

About what? How can Your Honors believe for a moment that this constitutes a proper specification, even under an informal practice. Better still would have been the general statement that Compagna had violated parole.

3. Failure to truthfully disclose associates on flight from Kansas City to Chicago following release from Leavenworth.

This took place before the parole became effective. The men were required to report in to the Chicago office. This, and the tax business, came within the same category as the charge against the prisoner who did something wrong before he obtained parole in the *Urbanowicz case.* Our brief, p. 22.

So upon re-examination, Your Honors will perceive that the so-called charges boil down to nothing.

The same oversights apply to the case here against Gioe, but we save the space required for repetition.

In the absence of any statement from the Board members, or the Government attorneys, as to the foundation for the revocation, Your Honors must conclude, as did the trial judge, that it could not have been upon (1).

Judge Underwood said in his opinion, our brief, p. 87:

> If the fact justified it, statement of the information acted upon would have brought a quick and easy end to the cases.

Your Honors must conclude as to (2), that there has been no hearing, no invitation to Washington, no notice of the nature of the charges. Further study of the record will leave only (3) as a possible foundation. It is possible that Your Honors recognized from the record that (3) was the basis of the revocation. To make certain that the circumstances in the record which show this to be true, *i.e.*, that (3) was the basis, we continue.

When Your Honors look again at the letter written by Dr. Killinger, R. 352, from which we quote:

> "It has never been the policy, however, to admit counsel to the deliberations of the Board either at the time it interviews the prisoner in connection with his application for parole or at the time he appears before the Board to make his statement in connection with its revocation or modification. See Rule 4(d), page 3, of our Rules and Regulations promulgated in 1936. Federal Boards of Parole have uniformly assumed, in the absence of any statutory provision to the contrary, that representation by counsel, taking of formal testimony, confrontation of witnesses, and other proceedings usually associated with criminal trials were not necessary to the determination by the Board *as to whether the welfare of society* would be promoted by the granting, *revocation* or modification of parole.
>
> Parole is not a legal right vested in a prisoner. It is merely the granting of permission, as an administrative act by an executive agency, to a prisoner to serve a portion of his sentence outside the prison walls. The parolee continues, both actually and legally, to be in custody. He is, however, allowed to remain in the community within limits fixed by the Board but under conditions that permit of *reincarceration* in the event of misbehavior, *or in the event the Board believes continuance of the prisoner on parole is no longer compatible with the welfare of society.*
>
> To sum up, it is our position that a formal hearing of the kind you seek is not provided for by the statute." (Emphasis added.)

The trial court perceived that the Board ill-advisedly assumed a power believed by Judge Underwood to be beyond that granted by Congress. We hesitate to believe that Your Honors have agreed with the Board, but such seems to be the meaning of the majority opinion. To point up further the claim made by the Board to this power we direct attention to the following among the rules published in the Code of Federal Regulations in 1938. Title 28, chapter 1, Department of Justice, our brief, p. 61. Similar rules prevail today, but we do not find that the Register has been brought to date.

> "2.32 REVOCATION OF PAROLE. Parole may be *revoked* only by the Board of Parole *when continuation of the parole status outside of the prison is considered to be incompatible with the public welfare.* The most frequent causes for revocation are found in the violation of a general or special condition imposed by the Board on the prisoner at the time of release, or a commission of a new crime. Each case and each charge will be considered on its own merits." (Emphasis added.)

We submit that, upon rehearing, Your Honors should consider all of these rules in the light of the power of the Board. Not the power thought by its members to be present, but the power given by Congress, as defined by the courts. We again call attention to our brief, p. 63, concerning this power. We repeat,

The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. *Manhattan Co.* v. *Commissioner,* 297 U.S. 129, 134.

The regulation * * * is invalid because not within the authority conferred by the statute * * *. It is not, in the sense of the statute, a regulation at all, but legislation. * * * The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act—not to amend it. *Miller* v. *United States*, 294 U.S. 435, 439-440.

Not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. *Manhattan Co.* v. *Commissioner*, 297 U.S. 129, 134.

The doctrine of the "exhaustion of administrative remedies" does not apply to rules made without authority. *Goldman* v. *American Dealers Service*, 135 F. 2nd 398, 402. *U. S. Alkali Ass'n* v. *United States*, 325 U.S. 196, 210.

It now appears that the majority has approached this case with the attitude voiced by Judge Sibley on oral argument. If we understood Judge Sibley correctly, he said that the Board can let them out or not as it chooses, and the Board has a like power to return prisoners to the penitentiary, in its discretion. That both functions, one as well as the other, have been committed to the discretion of the Board. Although this view is entertained by members of the Board we submit that it is a mistaken notion.

We submit that Judge Waller is correct in his dissent. As is said by Judge Waller, p. 14, the majority opinion puts the Board above the law. We quote:

> "Notwithstanding the pronouncement of the Board to the sub-committee that it, like Pilate, found no fault in the parolees since their release, and notwithstanding the refusal of the Board members to answer interrogatories or to divulge, either to the parolees or to the lower Court, any reliable information as to any violation of parole, these men have been cast back into custody from which no relief can come if the Board is above the law."

Of course if the Board has the power assumed by it, and found to exist by the majority opinion, these paroles could be revoked without any fault in the parolees, since their release. There need be no information as to violation, as misbehavior would not be necessary. The refusal of the Board to answer interrogatories would be in keeping with such power. It could do no one any good to learn the basis of the revocation if it be a matter of opinion.

To use the language employed by Judge Holmes, dissenting in *Commercial National Bank in Shreveport* v. *Connolly,* 176, F. 2d, 1004, 1010, Your Honors have the power to give the Board authority to put these prisoners upon a string, and to pull the string at its whim. Inclination and power are not synonymous. Justice weeps. *Res judicata facit de albo nigrum et de quadrato rotundum.*

The attitude expressed by Judge Sibley, is shown in the following quotation from the majority opinion, pp. 6, 8,

> "It is very evident that the whole matter of paroles is left to the informed discretion of the Board."
>
> "Parole revocation is informal and discretionary,* * *".

As we have said, Your Honors have made the mistake of regarding the granting of paroles and the revocation in the same manner. This great power is desired by the Parole Board and is sought by the Government Attorneys, but fortunately, it has no foundation in the law.

The truth of the matter seems to be as we have said, that the Board has revoked these paroles because it believes the continuance of the prisoners on parole is:

> "no longer compatible with the welfare of society."

The judgments of courts can turn white into black and square into round.

This belief, that it would be more pleasant for everybody if the prisoners were locked up, was engendered by the newspaper pressure and the Congressional hearings. No such power exists in the Board as to revocation. Such a mistake on the part of the Board would be one of law, and as such, was subject to review by means of habeas corpus. *United States* v. *Downer,* 135 F. 2nd. 521. *United States* v. *Grieme,* 128 F. 2nd. 811.

It is true, of course, that the Board may exercise its discretion with no interference from the courts, as to the granting of paroles. A re-examination of the statutes will demonstrate that a person is not entitled to parole unless the Board believes that parole is compatible with the welfare of society. The vesting of such discretion in the Board in the matter of granting paroles gives them an uncontrolled power. The Courts have nothing to do with this business of granting paroles. There would be no need of repeating this, except that we are afraid Your Honors have overlooked the distinction between the power given the Board in this matter of giving paroles and in taking them away.

When it comes to revocation, the power of the Board is discretionary, it is true, but Congress has indicated the propriety of certain procedures. *Cf. Escoe* v. *Zerbst,* 295 U.S. 490, our brief p. 112. A prisoner must be afforded due process. Your Honors have overlooked the force of the following paragraph, which we quote from the dissenting opinion, rendered by Judge Waller, p. 12:

> "That one who has rightfully earned and lawfully achieved parole has a status—call it what you will—which he has the right to defend and of which he cannot be deprived except by due process of law, to be afforded either by the Board, or, upon its failure, by the courts."

Upon rehearing, when Your Honors again examine the statutes and the authorities cited in our brief. *Clark* v. *Suprenant, Ex parte Urbanowicz, Fleming* v. *Tate, Moore* v. *White,* we trust that this confusion will cease to exist and that Your Honors will perceive that Congress has specified a difference between the granting and revocation of parole. We quote from the argument made by the Assistant Attorney General, R. 311,

> "By Mr. Gottshall: Well I still maintain, as I suggested a moment ago, that Congress has prescribed an orderly system for procedure by the Parole Board."

Mr. Gotshall stressed this prescribed orderly system of procedure when he was endeavoring to persuade Judge Underwood that the Judge should wait for final decision by the Board. The Government attorneys have never contended, and do not contend in this case, that the courts are without power, by habeas corpus, to inquire into the manner and cause of a revocation. Re-examination of the Government brief, p. 16, will show that the Government attorneys conceded that circumstances could create a case for judicial intervention, before final action on the part of the Board. The Government attorneys took especial care to disclaim any such power as given by Your Honors to the Board. We quote from their brief, p. 17:

> "The respondent at no time made objection upon any other ground than that the parole statutes contemplated final action by the Board before jurisdiction in the matter could vest in the court."

The Warrant.

We again quote from the majority opinion, p. 9,

"The warrant has become unimportant."

We submit that Your Honors have failed to recognize the force of the distinction pointed out by Mr. Justice Waller, p. 13. Par. 9:

> "The fact that a criminal trial may be lawful despite the fact that the defendant was taken on an invalid warrant of arrest, as analogized in the majority opinion, seems inapt here. The trial in a criminal case is on an indictment or information whereby, if conviction results, the defendant may be deprived of his liberty. It is the indictment or information that informs the defendant of the charges and what he shall be expected to meet. In a revocation of parole it is the warrant of arrest that deprives him of his liberty * * *".

Your Honors have overlooked *Columbia System* v. *United States,* 316 U.S. 407, our brief p. 19. The warrant is in fact a commitment, and the label put on it should not prevent Your Honors from perceiving its purpose.

But of course, as we have said, the warrant would be unimportant, after its execution, if the Board has the power said by Your Honors to exist. The present decision of this Court conflicts with *Moore* v. *White,* our brief p. 21, which held that a warrant must issue to give the Board jurisdiction. The parolee was taken into custody by virtue of a telegraphic request made by the authorities in Washington.

Also we submit that Your Honors have failed to note the distinction between the following cases, and the case at bar.

103 F. 2d 334. We endeavored to distinguish this case, beginning on page 33 of our brief. Your Honors will note upon re-examination of the record, pp. 316, 317, 318 that *Bowers* v. *Dishong* came up for discussion during the argument of Mr. Gottshall and that Judge Underwood clearly distinguished it from the case at bar.

We quote from Judge Underwood, our brief, p. 91:

> "In *Bowers* v. *Dishong,* 5 Cir., 103 F. 2nd. 464, 466, the issue was whether or not the Parole laws applied to prisoners on parole under conditional release. The Court held that they did and that 'The Board of Parole shall have the exclusive authority to issue warrants for the re-taking of any United States prisoner, who has violated his parole.' The validity of the Parole Violator Warrant was not in question.
>
> It will be observed that in none of the cases cited was the validity of the warrant attacked, at least not until after hearing and final revocation of parole, and not attacked, as here, upon the ground that there was no evidence at all to support the warrant."

We also quote from Judge Igoe, in a companion case, our brief, p. 113:

> "The case of *Bowers* v. *Dishong,* 5 Cir., 103 F. 2d, 464, has been cited as an authority for the proposition that the statute places no restraint whatsoever upon the power of a parole board member to issue a warrant for the revocation of a parole. In that case, immediately upon his arrest under the parole warrant the prisoner sought and obtained a temporary writ of habeas corpus. After the marshal filed his return showing that he held the prisoner under a parole warrant the District Judge dismissed the writ because the prisoner sought a hearing on whether a violation of the parole had occurred. The court was of the opinion that such a hearing would oust the jurisdiction of the board of parole and that ruling was upheld

> on appeal. However, in the instant case, the issue is more fundamental. * * *
>
> Therefore, DeLucia is asking the court to inquire into the legality of his detention under a parole warrant which was issued arbitrarily and capriciously and without being based upon information of any kind."

We know of course that Judge Sibley was not bound to accept the views of trial judges, but upon rehearing such views may help Your Honors to avoid a rather serious misapprehension, concerning the function of a warrant, as intended by Congress and recognized by the courts. The fact that the Warden abandoned his claim for custody under the warrant makes the question moot as to whether the trial court may intervene by habeas corpus before completion of Board action, but we submit that a proper understanding of the purpose and function of a warrant remains as an important question for decision. If Congress intends that the Board not proceed until it has information, or until a parolee violates, then the issue of the warrant is a required step in the procedure. Under such an interpretation the warrant is not unimportant if it be claimed that it was issued arbitrarily.

United States v. Nicholson.

78 F. 2nd 468. The main question concerned good time. Petitioner was in no position to attack the revocation of his parole a year after his hearing. His attack upon the warrant was without any support in the record.

United States v. Nicholson

102 F. 2d 94. As we stated in our brief, p. 34, Judge Underwood gave the Government all it could hope to establish by this case, i.e., a presumption that the warrant was proper. Respondent in the case at bar R. 99 disclaimed

any knowledge as to whether the warrant was issued capriciously without information. He relied solely upon this presumption. But the presumption was overcome by the proof. Your Honors have lost sight of the fact that this is a rebuttable presumption and must give way in the light of the facts proved. Judge Underwood said in his opinion, our brief, p. 87:

> "(5) However, respondent and the Board have chosen to rely solely on their claim that the Court may not inquire into the matter, but must accept as a conclusive presumption that the warrants were based on reliable information, although the evidence adduced and unrebutted shows that there was no violation and therefore no reliable information upon which to base the warrants."

We repeat from our brief, p. 35, concerning the *Nicholson case* with the suggestion that Your Honors have failed to distinguish it from the case at bar. Nicholson had been charged below and did not appear in the Circuit Court. It appears that the discharge was based upon an alleged defect in the form of the warrant. Other grounds were given for the discharge, but they were held to be insufficient. The Circuit Court said (p. 95):

The only question properly before us is the legal sufficiency of the warrant issued by the member of the Parole Board as authority for the arrest and detention of the prisoner.

The warrant was held to be in proper form. The warrant in the case at bar is in proper form. In the *Nicholson case,* the court was not asked to look behind the warrant. Such a request would have done the prisoner no good because it appears that Nicholson violated his parole by the commission of another crime, for which subsequent crime he had been convicted. The Parole Board member had reliable information upon which to base the warrant, *i.e.,*

conviction of another crime. Nicholson did not claim, as we do, that the warrant was arbitrarily issued without evidence. Your Honors will note that the warrant is set out in full in the *Nicholson* case. It states that "satisfactory evidence has been presented" that the prisoner had violated. Your Honors cite the *Nicholson case* concerning mandamus. Your Honors have overlooked the proposition that mandamus would not lie if the Board has the discretion and power given it by Your Honors. Unless Your Honors mean to hold that mandamus is our exclusive remedy and habeas corpus does not lie, nothing can be gained by further discussion of mandamus. These petitioners had had their so-called hearing.

United States v. Barc

141, F. 2nd. 480, 483. Petitioner was convicted of another crime while on parole. He claimed that good time caused his sentence to expire before the violation—a point not here involved. There was no claim that the warrant was not properly issued. When Judge Tysinger read from this case in the argument, R. 333, Judge Underwood said:

> "I don't think you or Mr. Gottshall get what is troubling me."

The Government attorneys did not cite *United States* v. *Barc* here in the brief of respondent. We assume that they must have abandoned it for the reason overlooked by Your Honors. It has no application here.

Fox v. Sanford

123, F. 2nd. 334. The petition presented nothing but a collateral attack upon authorized proceedings of the Board. Fox had been, subsequent to his parole, indicted for another offense to which he pleaded guilty. It will be

observed that this case was distinguished from the problems here presented by Judge Underwood. Our brief, p. 91, A29, from which we quote:

> "In the Fifth Circuit cases, the attacks on the warrant were made after hearing and the revocation of parole. The Court held in *Fox* v. *Sanford,* 5 Cir., 123 F. 2nd 334, 335, that, 'As provided by statute Fox was given a hearing before a member of the Board of Parole, and the reliability or sufficiency of the information upon which the Board acted is not a matter for determination by the courts in a proceeding for habeas corpus.'"

Anderson v. Corall

263, U.S. 193. We do not question the soundness of this decision. It will be noted that it is cited by Judge Igoe, our brief p. 111, A76, in support of the principle that a parole warrant can be issued only in the exercise of discretion based upon information. Your Honors cite this case, p. 5, in support of the following;

> "That the term may be * * * ameliorated by serving it outside the prison walls on parole is a legislative grace and not a thing of right."

Here again Your Honors confused the power to grant or withhold parole with the right to end it. Your Honors say p. 6,

> "As respects parole, the original statutes, as well as the revision now in force bristle with discretion given the Board, and are silent about court interference."

We can not expect to find the power of courts in habeas corpus, spelled out in the parole statutes. Your Honors must know that that power exists, even where Congress has attempted to take it away, as in Selective Service cases. *Estep* v. *United States,* our brief p. 20. Your

Honors must know, when reminded, that although Congress expressly provided that the decision of the authorities as to the necessity or desirability of the detention of alien enemies is not reviewable, yet a person detained as such may have his status as an alien enemy determined on habeas corpus. 39 C.J.S., sec. 50, p. 593. Even if Your Honors hold to the opinion expressed by Judge Sibley on oral argument, that the courts have gone too far in the matter, it should not be forgotten that:

> "the writ of habeas corpus is the precious safeguard of personal liberty, and there is no higher duty than to maintain it unimpaired." 39 C.J.S. sec. 1, p. 424.

As Your Honors know the use of the writ of habeas corpus as an incident of the federal judicial power, is implicitly recognized by the United States Constitution. Article I, section 9, clause 2. *McNally* v. *Hill,* 293 U.S. 131. Statutes involved, our brief, pp. 17, 18.

Upon rehearing it will be necessary only for Your Honors to perceive that the parole statutes should receive a reasonable construction, in the light of the fundamental power of the courts to see that due process is afforded a prisoner out on parole.

Misapprehension as to Legal Necessity of Valid Warrant

In holding that the warrant is unimportant, Your Honors have overlooked the fact that it has been held that the warrant is jurisdictional. We quote from our brief, p. 21,:

> "Your Honors will perceive that in the case last cited, *Moore* v. *White,* 23 F. 2nd, 467, there existed a plain violation, known to the authorities. But the special agent arrested the prisoner without warrant. Upon the hearing it was proven that the violation took place, but the evidence of the hearing could not supply the necessity of a warrant. No warrant, no jurisdiction.

Erroneous View of Majority.

It appears to us that what Judge Sibley has tried to say is,—that without regard to the manner in which petitioners were taken into custody previous to the revocation order, that they should have been returned to the Warden on the mere production of a paper containing a statement that the paroles had been revoked. Since, in any event they were in the custody of the Attorney General, in prison or out, and no hearing was required, the revocation order itself was valid. Judge Sibley seems to think that this is so—regardless of how the Board happened to reach the conclusion that the paroles should be cancelled. There need be no connection between the decision to revoke and the warrant. The warrant is unimportant.

If we are correct in our understanding of the majority opinion, a mere statement of the position taken by Judge Sibley should cause its abandonment. The Board has surely been placed above the law.

As said by Judge Stephens in *Philadelphia Co.* v. *Securities and Exchange Com'n*, 175 F. 2nd. 808, 817:

> "It is elementary also in our system of law that adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon a hearing wherein each party shall have opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment of the Constitution. The applicability of this clause to the quasi-judicial proceedings of an administrative agency is recognized in *L. B. Wilson, Inc.* v. *Federal Communications Commission*, 170 F. 2nd. 793 * * * ".

After calling attention to the requirements of the statute then under consideration, Judge Stephens said further:

> "We think the requirements of the section as written contemplate a hearing conducted in a manner appropriate for adjudicatory action. But even if the requirements of the Act can be said to be less than clear in this respect, they must be construed as contemplating a hearing so held, for 'In the case of all acts of Congress, such interpretation ought to be adopted as, without doing violence to the import of the words used, will bring them into harmony with the Constitution. An act of Congress must be taken to be constitutional unless the contrary plainly and palpably appears.'" The *Japanese Immigrant Case,* 189 U.S. 101.

If we may be permitted to again borrow from the language of Judge Holmes in the *Bank case,* 176 F. 2, 1004, 1018. If Justice wept, when Your Honors stated that the warrant had become unimportant, she shrieked and swooned when the remainder of the decision was announced. It was all right, for the member of the Parole Board to issue the warrant arbitrarily and without any information, and then for the Board to revoke the parole, without any evidence or information,—without giving the prisoners the hearing required. The short answer to this ruling is that these matters have been before the courts. It has always been held that due process is required.

Old and New Statute as to Warrant.

We quote from the majority opinion, as now written, p. 6,

> "Section 4205 provides: 'A warrant for the retaking of any United States prisoner *who has violated his parole,* may be issued only by the Board of Parole or a member thereof, and within the maximum term or terms for which he was sentenced.'" (Emphasis added.)

Your Honors have overlooked the significance of the words *"who has violated his parole?"*. We proved, and Judge Underwood found, that the Board had no information at all, and petitioners had not violated. The prisoners did not come within Section 4205. The Board, or member issuing the warrant, would have to have some information that the prisoner had violated under Section 4205 as well as under the previous statute. Your Honors say p. 7, that the trial judge ignored the change in the statute. This is not correct. We submit that Your Honors should withdraw this statement when it is found that upon re-examination that the old statute and the new statutes are alike in that they both require some information to the effect that a person has become a violator.

Your Honors have decided a point contrary to the position taken by the losing party below, R. 150:

> "By Mr. Tysinger: * * * The warrant itself is in the record, and it says 'upon reliable information' and that's what the statute says, except in the new code effective September 1st, 1948, they cut out the 'reliable information' out of that, *but that doesn't affect this warrant,* because they issued it before that. But under the old statute, it says the warrant shall be issued upon 'reliable information.'" (Emphasis added.)

As Judge Waller has observed p. 13, Par. 8,

> "The case must be judged by the law as it existed July 1, 1948, or at the time of the issuance of the warrants for the arrest, and not by the New Judicial Code of September 1, 1948."

Upon rehearing, Your Honors will observe that the old and the new statutes were discussed below in argument. Both were fully considered by the trial court. The old and new are no different, when it comes to consideration of our claim that the Board could not lawfully issue its

warrant without any information, under neither, would the Board have power to issue a warrant in such manner as to be deemed arbitrary and capricious. Judge Underwood properly regarded the old and the new as alike concerning our point, as appears from the following, our brief, p. 85:

> "The statute, 18 U.S.C.A. 717 (now 4205), applicable in these cases, authorizing revocation of parole, provides that if the Board of Parole, or any member thereof, shall have reliable information that the prisoner has violated his parole, a member of the Board may issue a warrant for the retaking of the prisoner."

Judge Igoe considered the matter under the old statute, and evidently did not believe that Congress had any intention to change the law. We quote, our brief, p. 104:

> "Section 717, 18 U.S.C.A. authorizes the issuance of a warrant for retaking a prisoner who has violated the conditions of his parole. This section reads as follows, 'If the warden of the prison or penitentiary from which said prisoner was paroled, or said Board of Parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner,' "

United States ex rel. Bilkumsky v. Todd

263 U.S. 149, 158. Your Honors cite this case to support the finding made here that "the warrant has become unimportant". If Your Honors will examine this case again, it will be found that, p. 152,

> "It is conceded that, if the fact of alien age was legally established, there was both probable cause for issuing the original warrant of arrest and ample evidence at the hearing to justify a finding that relator was within the United States in violation of law."

The Supreme Court then points to proper evidence to establish the fact of alienage. What was said on p. 158, and used by Your Honors, was not necessary to the decision. It is a correct statement of law, but not applicable in the case at bar, where the warrant is required by statute, and is jurisdictional. Permit us to examine the cases cited on p. 158. In *Nishimura Ekiu* v. *United States,* 142 U.S. 651 a person under contract with the Government officials made the arrest, but the proper official ordered that the Japanese woman be not allowed to land. She endeavored to argue that the contractor had no right to stop her in the first place. We hope that Your Honors will agree that these petitioners have rights superior to Japanese immigrants. The following quotation from *Nishimura Ekiu* v. *United States,* p. 660 should help to distinguish a parole case from an immigration matter:

> "It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."

Another case cited on p. 158 of the *Bilkumsky case* is *Lasigi* v. *Van De Carr,* 166 U.S. 391. Lasigi was arrested in New York and held by a magistrate for extradition to Massachusetts. He claimed that the Massachusetts courts could not try him because of his consular office. It was held by the District Court that all questions as to the proper tribunal for trial could be heard by the court in the demanding state. It appears that Lasigi lost his consular office during the pendency of the habeas corpus proceedings. This called for application of the rule in *Nishi-*

mura Ekiu v. *United States.* The habeas corpus statute gives the District Court power "to dispose of the party as law and justice require." The *Lasigi case* should also serve to distinguish the *Bilkumsky case* from the case at bar.

Before Your Honors pay much heed to immigration cases may we suggest that Your Honors examine *Gonzales* v. *Williams,* 192 U.S. 1. A woman from Puerto Rica was detained as an alien immigrant. After holding that she did not come within that class of persons the Supreme Court said, p. 15,

> "And in the present case, as Gonzales did not come within the act of 1891, the commissioner had no jurisdiction to detain and deport her by deciding the mere question of law to the contrary; and she was not obliged to resort to the Superintendent or the Secretary."

In the case at bar, after Your Honors ascertain that petitioners were not among those *who had violated parole,* Your Honors should hold for naught any mere order of revocation based upon a void warrant, and made without support. Judge Sibley will remember that in *Brewster* v. *Villa,* 90 F. 2nd. 853, speaking for this Court his Honor recognized that a difference in status caused the administrative body to lack jurisdiction.

It is plausible to say that the parole statutes may be so drafted that the granting of parole in the first place and such investigations, hearings, or lack of hearings as may be deemed appropriate in the discretion of the members of the Parole Board is all that is required and that no formal "due process hearing" is required. It is not plausible to say that the procedure outlined by Section 4205 for retaking of a prisoner does not contemplate a hearing which meets the test of due process since the statute expressly says that a warrant for the retaking may be issued

for one *"who has violated his parole."* By some method it must be made to appear that he has violated the parole, otherwise the issuance of a warrant would be completely arbitrary and capricious and the Board would be without jurisdiction on an arrest under such a warrant.

In view of the fact that Your Honors cite an immigration case, we again call your attention to the following case referred to in our brief, pp. 89, 94.

Mahler v. Eby, 264 U.S. 32.

The immigration authorities used a form of warrant applicable to a different class of aliens than the one before them, p. 44. It was held that the warrant was void. A proper warrant was jurisdictional, so it was held that evidence heard at the hearing could not supply the defect.

Administrative Procedure Act.

We again quote from the majority opinion, p. 9,

> "The requirements as to procedure in the Administrative Procedure Act have no application to the Parole Board. Its procedure is fixed by a later statute, revised title 18, Chapter 311, Parole."

If we are correct, in our understanding of the majority opinion to the effect that the new parole statutes contradict and take the place of the Administrative Procedure Act, or that the new act shows that Congress did not intend parole matters to be under the Procedure Act, we submit that Your Honors have overlooked a stronger argument, *i.e.* Administrative Procedure Act being in effect at the time of the amendment to the Parole statute, Congress had in contemplation the fact that the procedure, insofar as revocation of paroles was concerned, would come under the terms of the Act, especially in view of the fact that

Fleming v. *Tate,* our brief, p. 21, had been decided. It is a settled rule of statutory construction that when a statute has been construed by the courts and the same is substantially re-enacted, the Legislature adopts such construction, unless the contrary is clearly shown by the language of the Act. It is not necessary that a statute should have been literally re-enacted to authorize the presumption that it was re-enacted in the light of the settled judicial construction that the prior enactment had received. 25 R.C.L. Statutes, section 297, p. 1075. Also, Your Honors have overlooked the fact that the new statute was enacted as a part of a general revision. If the construction suggested by Your Honors were adopted, the Administrative Procedure Act would become a dead letter as to many other statutes revised in the Judicial Code.

We argued the application of the Administrative Act in our brief, p. 52. Judge Underwood did not grant relief under the Act, as Your Honors observed, p. 5:

> "The district judge apparently thought the Administrative Procedure Act, 5 U.S.C.A. Sec. 1001, and following, has no application to the procedures of the Parole Board in granting paroles, revoking, or modifying them, though he did not expressly so rule."

It is not vital to our case that we convince Your Honors that the Administrative Procedure Act applies. The remedy by habeas corpus is sufficient, without any help from the Act. However, in the interest of accuracy, we believe Your Honors may wish to reconsider the following, which we quote from the majority opinion, p. 7:

> "Certainly no review of what the Board is doing or has done can be undertaken by habeas corpus where the Board is not a party, and no such directions can be given it as these applications pray for."

If the Administrative Procedure Act applies, it has made express provision for habeas corpus. Our brief, p. 65:

> (b) FORM AND VENUE OF ACTION.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any application form of legal action (including actions for declaratory judgments of writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law. * * *

Surely Your Honors do not mean to say as Judge Waller has indicated that the majority has held that the Board is above the law. If the revocation is not made reviewable by statute, there is no other adequate remedy in any court and the Administrative Procedure Act provides for judicial review. Upon rehearing, Your Honors should place this agency action in one of three classes. (1) "Made reviewable by statute," (2) subject to judicial review by habeas corpus because no other adequate remedy in any court exists, or (3) the Board is above the law. We know of no statute under (1). Your Honors can not lawfully agree on (3). 227 U.S. 88, 91; 285 U.S. 22, 56; 319 U.S. 182, 188, our brief, pp. 54, 55. Upon rehearing we trust that Your Honors will perceive that (2) is the only place for the case at bar.

Right to a Hearing.

We believe we might help Your Honors to see the error of the majority in the case at bar and the correctness of the dissent, if we turn first to the Circuit Court opinion and then to the Supreme Court judgment in the *Escoe case.*

In *Escoe v. Zerbst, Warden*, 74 F. 2nd, 924, there will be found a number of general statements, including the following, which caused the Circuit Court to miss the real point:

> "It is clear the court had authority on August 5th to revoke the probation order, including the suspension of sentence made by it on October 10, 1932. It had continuing jurisdiction after that date of both the case and of the person of appellant in respect to his probation. * * * Instead of pursuing this course, he has chosen to invoke the higher privilege of habeas corpus and is now asking this court read into the probation act of Congress (18 U.S.C.A. Sections 724, 727,) a rule of criminal procedure which would make the order of August 5th absolutely void. In this period of enlightened procedural liberalization, it may not be supposed that Congress intended to or that the courts will by construction weigh down and encumber the probation act of Congress with the outworn technicalities of the old criminal procedure."

Now compare the able opinion rendered by Mr. Justice Cardozo in the same case, *Escoe* v. *Zerbst, Warden,* 295 U.S. 490, our brief, p. 53, holding that habeas corpus is a proper remedy to obtain a release of a probationer who has been committed without an opportunity to be heard. The statutes must be complied with. In construing the probation statutes Judge Cardozo said, p. 493:

> "The charge against him may have been inspired by rumor or mistake or even downright malice. He shall have a chance to say his say before the word of his pursuers is received to his undoing. This does not mean that he may insist upon a trial in any strict or formal sense. *Burns* v. *United States, Supra,* pp. 222, 223. It does mean that there shall be an inquiry so fitted in its range to the needs of the occasion as to justify the conclusion that discretion has not been abused by the failure of the inquisitor to carry the probe deeper."

Upon consideration of this petition for rehearing we trust that Your Honors will keep in mind the difference between the granting of parole and its revocation. The granting of parole partakes of the nature of executive clemency rather than the determination of rights in accordance with judicial process.

We agree with Your Honors that the Board may give or withhold parole in its discretion. The courts have nothing to do with this proposition. But we submit that here is the point that has been overlooked by Your Honors, and noted by Judge Waller in his dissent, when a prisoner accepts and goes on parole, his status is changed. In order to secure his imprisonment, because of a violation, certain steps are required. In the matter of revocation the courts have power to examine into the matter and determine whether or not there has been substantial compliance with the law and whether or not the board has acted within its power. As was said by Judge Igoe, our brief, p. 111:

> "Discretion involves the exercise of judgment. The exercise of discretion or judgment depends upon facts."

Quoting from the *Escoe case,* our brief, p. 112:

> "The judge is without the light whereby his discretion must be guided until a hearing, however summary, has been given the supposed offender. cf. *Snyder* v. *Com. of Mass.,* 291 U.S. 97, 116, 54 S. Ct. 330, 78 L. Ed. 674, (683), 90 A.L.R. 575."

In order to again bring to the attention of Your Honors some of the limitations placed by the courts on the Board we repeat from brief, p. 22.

Ex Parte Urbanowicz, 24 F. 2d. 574.

The prisoner was first discharged by writ of habeas corpus having been arrested while on parole under a violation warrant. He had been illegally transferred to an-

other prison. The second arrest, involved in this case, was made without warrant. The Board sent for the prisoner by means of a letter. When the prisoner appeared before the Board, it revoked his parole. The District Judge looked into the matter on habeas corpus and learned that the revocation was made because the prisoner, while confined in the prison before his parole was granted, had done certain things which were unknown to the prison officials, which matters would have caused the Parole Board to refuse his application for parole. The prisoner was discharged on habeas corpus, because the Board had no right to revoke on any such grounds. Your Honors will readily understand that the Parole Board might have refused to parole Urbanowicz if the Board had known of his misconduct, or for no reason. But after the parole had been given to Urbanowicz the Parole Board had to find a violation of the parole. It was necessary that this violation be within the meaning of the statute. The Court said, p. 575:

> "The Boards of Parole of each of the penal institutions of our country are purely creatures of the law, clothed with just such powers, and no more, as the law of their creation confers upon them, and to act in such manner as the law directs, and no other."

Another indication that Judge Waller is correct in his statement and that the Board regards itself as above the law is to be found in the Board rule which we quote from our brief, p. 61:

> "2.22 REVOCATION OF PAROLE BECAUSE OF CONCEALED INFORMATION. All grants of parole are predicated on the good faith and frankness of the prisoner. If, after release on parole has been granted, evidence is offered which shows that substantial information, given by the prisoner to the Board either before or after release, was incomplete or wilfully concealed, the Board may revoke the parole granted."

Surely the Board members knew of the *Urbanowicz case* when the opinion was rendered. Yet it has made no change in its rules and continues to warn parolees that any violation of this rule will spell reimprisonment.

No Error in Denial of Motion for New Trial.

Your Honors will remember that, on oral argument, Judge Sibley stated to counsel that he would concede for the purpose of argument that Judge Underwood was correct in holding that the warrant was void. Now it seems that, in view of the holding of the majority that the warrant has become unimportant, the first opinion and judgment rendered by Judge Underwood has ceased to be of any importance. But we seek to remind Your Honors of the statement made by Judge Sibley in order to make a point—important on rehearing. Judge Sibley said that if Judge Underwood had then and there discharged the petitioners, the judgment would have been correct because of the void warrant. But, said Judge Sibley, it appears further from the record that before the discharge could take effect, the Warden made a motion to reconsider the judgment. Judge Sibley stated that here is the place where Judge Underwood "went over the fence". Judge Sibley gave as his off-hand opinion that Judge Underwood should have granted this motion and the trial judge should have required petitioners to show, if they could, that the revocation order was groundless. The position taken by Judge Sibley is new to the case. This position has been incorporated into the majority opinion. The Government attorneys took no such attitude, further than the general claim that Judge Underwood erred. So we request the privilege of showing that Judge Sibley has inadvertently fallen into grave error. Your Honors have entirely overlooked the correct approach to this problem.

First permit us to make a point in passing. We quote from the opinion as now written, p. 7,

> "Within the fifteen days, the Board rendered an order revoking the paroles, and certification thereof was made to the Warden. He made a motion to reconsider the judgment and presented this order to the court and asserted that *he now holds custody, not under the warrants of Judge Rogers, but under the order of the Board revoking the parole.*" (Emphasis added.)

If any attention is to be paid here to the paper filed by the Warden at the last moment, we submit that this amounts to an abandonment of the warrant. Your Honors have found that the Warden asserted that he no longer held custody under the warrants. The Government should not be permitted to maintain this appeal, concerning the order of the court below with reference to the warrant.

Your Honors will notice from the record, R. 415, that the notice of appeal is double barreled. It states that the Warden appeals from:

> "the opinion and order sustaining the habeas corpus entered on December 4, 1948, and order overruling the motion for reconsideration of judgment entered December 20, 1948."

In the statement of points relied upon on appeal, R. 417, Your Honors will note that No. 7 states that the trial court:

> "erred in sustaining the writ of habeas corpus and ordering the petitioner discharged from custody."

In a separate paragraph, No. 8, R. 418, it is said that the trial:

> "court erred in denying respondent-appellants motion for reconsideration of the judgment sustaining the writ of habeas corpus."

We submit that the Government should not be permitted

to pursue both appeals. They contradict each other. If the Warden abandoned his claim to hold these men under the warrants, he should not be permitted to appeal the first point. He should not be allowed to prevail on the second point,—for many reasons, overlooked by Your Honors.

We again quote from the majority opinion, p. 11:

> "The district court here held that the warrant was invalid and that all that followed was void, and did not try at all the Warden's pleading presenting the orders of revocation, but hastily condemned them on the further ground that the hearing was unfair, and released the prisoners from the Warden's custody."

We submit that upon a re-examination of the records Your Honors will conclude that any reference to the action of the trial court as being hasty is hardly fair to the attitude of patience and extreme care shown by the judge. Your Honors have overlooked the fact that at the time of the hearing before Judge Underwood two members of the Parole Board had held their so-called hearing. The matter had been as fully explored.

As to the alleged error on the part of Judge Underwood, in failing to take further action, when the motion to reconsider was presented, permit us to remind Your Honors of a few fundamental principles of law. The general rule, stated in 36 C.J.S. *Federal Courts,* Section 297, page 400, is as follows:

> "The trial court's exercise of discretion with reference to an application to open, vacate or set aside a judgment will not be disturbed on appeal except for a clear abuse of discretion." * * *.

We refer Your Honors to an opinion by Judge Hutcheson, in *Gas Ridge* v. *Suburban Agricultural Properties,*

150, Fed. 2nd. 363, dissent by Judge Sibley, p. 1020. We quote from Judge Hutcheson, p. 366:

> "As to the action of the court in refusing the motion to reopen the case, this motion was addressed to the sound discretion of the Judge and his action will not be disturbed in the absence of showing that it has worked an injustice in the cause. Nothing of the kind is made to appear."

In *Blytheville Cotton Oil Company* v. *Kurn,* 156 F. 2nd, 467, it was held that the trial judge did not abuse his discretion in denying a motion to reopen case for the taking of additional testimony. The motion was not based on newly discovered evidence, and the evidence could have been readily submitted at the trial. We quote from the opinion by Judge Simons, p. 470:

> "The final claim of error in the failure of the court to reopen a case for the taking of additional testimony must also be rejected. The motion was the equivalent of a motion for a new trial. The granting of such a motion is in the sound discretion of the trial judge and his determination will not be overturned except for its clear abuse."

The motion was not based upon newly discovered evidence. Clearly, Blytheville could readily have submitted the subsequently proffered proofs at the trial.

In *United States* v. *Day,* 20 F. 2nd, 733, writ of habeas corpus were granted to four aliens. Orders were granted in each case sustaining the writ and discharging the relator and the respondent appealed. It was held that in habeas corpus proceeding an order denying reargument is not final and appealable. It appeared that one of the aliens had taken an appeal only from the order denying reargument. His appeal was dismissed, and the orders in the other cases were affirmed.

We quote from *United States* v. *Uhl,* 137, F. 2, 858, 860.

> "The appeal from the second order which denied the relators motion for reargument must be dismissed. Such orders are discretionary and nonappealable. The rule that final orders only are reviewable applies to habeas corpus proceedings. *Collins* v. *Miller,* 252, U.S. 364."

In *DeJordan* v. *Hudspeth,* 137 F. 2, 943, the petitioner failed to appeal from the order denying a petition for habeas corpus within the statutory period, and it was held that an order denying a motion for rehearing is not an appealable order. A number of cases and text books are cited.

In *E. C. Shevlin Co.* v. *United States,* 146, F. 2d, 613, The United States secured the vacation of a judgment previously entered against the Government in condemnation proceedings. From an adverse judgment entered on a new trial after consent judgment had been set aside, the defendant appealed. It was held that the position of the United States as a litigant seeking to establish its statutory rights is exactly the same as that of any other litigant. Judge Denman said, p. 615,

> "Whatever may be the favorite position of the State in German litigation, the United States, before its courts, is no super-personality dominating opposing litigants."

We quote from 36 C.J.S. Section 297, p. 389,

> "The general rule, is that as to matters within the discretion of the trial court, review by the Circuit Court of Appeals is limited to question whether there has been an abuse of discretion, and that unless such abuse clearly appears the Circuit Court of Appeals will not review or disturb the trial court's action or rulings with respect to such matters."
>
> "It has been said that the question of discretion is the display of sound judgment; that discretion

> means the equitable decision of what is just and proper under the circumstances, and that abusive discretion in law means that the court's action was in error as a matter of law or was arbitrary and not justifiable in view of the situation of circumstances affecting the exercise of discretion, or was such that no reasonable man would take the view adopted by the trial judge."

The Federal Rules of Civil Procedure do not apply to the trial of a habeas corpus proceeding, for therefore we submit that in spite of the fact that under the new rules formal exceptions to rulings or orders of trial court are unnecessary to save for review alleged errors therein it will be necessary to consult the former practice in order to determine the rules applicable to these proceedings. Such Rule is stated in 36 C.J.S. Section 292, p. 259:

> "Formerly exceptions to alleged error were usually necessary in order that such error might be considered on appeal."

Your Honors will notice from the record that the Government attorneys did not take one exception. There is no exception noted to the original judgment, discharging these petitioners, nor was any exception taken when Judge Underwood refused to grant a new trial. So therefore we submit that the Government is not in a position to maintain this appeal.

The general rule is stated in 39 C.J.S. habeas corpus, Section 107, p. 704, as follows:

> "The availability of a rehearing generally in habeas corpus proceedings varies in the several jurisdictions. Even in jurisdictions where a rehearing is permissible, it will be denied where no substantial grounds therefor are shown."

In *Zahn* v. *Hudspeth, Warden,* 102 F. 2nd, 759, it was held in a habeas corpus case that a motion for rehearing

is addressed to the sound discretion of the trial court, and its action thereon will not be disturbed on appeal unless there is an abuse of such discretion. It will be noticed that Judge Bratton looked into the showing made by the petitioner upon which he based his petition for rehearing, and found that the same was defective.

We quote from the opinion by Judge Philips, p. 364, in *Western Union Telegraph Co.* v. *Dismang,* 106 F. 2nd, 362:

> "An application to open, vacate or set aside a judgment is within the sound legal discretion of the trial court, and its action will not be disturbed by the appellate court except for a clear abuse of discretion. It is an abuse of discretion, however, to open, or vacate a judgment where the moving party shows no legal ground therfor, or offers no excuse for his own negligence or default. Here, the plaintiff wholly failed to plead or establish any ground for vacating the judgment."

In the *Dismang case,* plaintiff sued for damages as the result of personal injuries sustained when a messenger boy hit her with a bicycle. The court reserved its decision on a motion for a direct verdict, and after the jury brought in a verdict for the plaintiff, the trial judge rendered a written opinion on the motion and held that the plaintiff had failed to establish that the boy was acting within the scope of his employment at the time of the accident, and concluded that the motion for a directed verdict for the defendant should have been sustained. After judgment, the trial court allowed the plaintiff to vacate the judgment on motion, and dismissed the cause without prejudice. This action on the part of the trial court was held to be error by the Circuit Court for the reason that the plaintiff made no showing as to how the plaintiff could possibly overcome the defect in the original action.

We submit that there is a parallel to be found in the

case at bar. When the Government attorneys asked Judge Underwood to reconsider the matter and grant them a new trial, it seems as if they should have made a showing as to what they expected the evidence to show on a retrial to support the action of the Board. As far as is shown by this record, the Board may have voted to revoke the parole without any evidence. It may have found its claimed authority to revoke a parole,

> "when it appears that a continuance is not compatible with the public welfare."

Judge Underwood had before him, in the record, enough circumstances to support a finding by him that the last minute revocation was void, having been based upon a mistaken notion of law on the part of the Board, *i.e.*, that it had the power to revoke for the sole reason that the welfare of society required such action. Further, if the Warden had been required to make a proper showing, he might have informed Judge Underwood that the record of the Board discloses that the revocation is based upon the power of the Board to determine that continuance of the parole was not compatible with the public welfare. In such event, there would be no need for any new trial.

Judge Underwood in overruling the motion for new trial said, R. 408:

> "If the motions were granted, there is no reason to suppose that upon reconsideration the Court would be met with anything but silence similar to that encountered at the hearings already had and nothing would be gained."

Upon rehearing, we hope Your Honors will perceive that at this point the Government attorneys could no longer remain silent as to the contents of the Board record—that is, if the attorneys expected to secure the exercise of judicial discretion to grant a new trial.

We submit that the Government attorneys are pretty much in the same position as were counsel in *Northwestern Lumber and Shingle Co.* v. *United States*, 170 F. 2nd 692. They can not acquiesce in the trial courts statement and then have Your Honors take a different position for them.

Upon re-examination of the record Your Honors should be able to ascertain what the revocations were based upon. The Judge said that they were based upon these illegal warrants and the attorney for the Board did not challenge that statement. Upon rehearing, we hope Your Honors will see that if Judge Underwood had re-opened the case, all the Warden offered to produce further was a paper he had received by mail. Assuming that this paper had been admitted, we submit that the judgment of discharge would be the only proper judgment. It must not be forgotten that when the Warden received this paper through the mail he was not in the position of a litigant in any other civil case. He was holding these prisoners for the court. He had made a return, as required by law, concerning his right to hold these petitioners. If the paper he received through the mail was to be given any legal effect it would effect a transfer. We quote from 39 C.J.S. sec. 89, pp. 654, 657:

> "Generally a person who has transferred the custody or restraint to another must state in the return, to whom, at what time, and for what cause, and by what authority, such transfer took place." * * *
>
> "The return should be sufficient in its detail of facts to show distinctly that the imprisonment is under the authority or claim or color of authority of the United States, and to exclude the suspicion of imposition or oppression on the part of the detaining authorities. The process or orders under which the prisoner is held should be produced with the return and submitted to inspection."

Citing, under the first paragraph, *In re Knott*, 126 N.W. 1040, 162 Mich. 10, and under the second; *In re Tarble*, 13 Wall. 397.

So, upon rehearing, Your Honors will perceive that the respondent was not fully advised concerning his duty to the court. Judge Underwood would have been justified in disregarding the paper entirely.

Your Honors will recognize that we here offer suggestions in support of the action of the trial court which may be new to the case. Perhaps a distinction should be drawn, however, between a new argument to overturn a lower court decision and the suggestion of a new ground for sustaining it, beyond, as it were, the lower court's judgment. Of course a party may offer any ground for sustaining a lower court's decision, although not previously raised or considered. See *United States* v. *American Railway Express Co.*, 265 U.S. 425, 435, 436. Judge Underwood no doubt thought that he had said enough in criticism of the attitude taken by the Department of Justice. Mr. Gottshall did not appear before Judge Underwood on the day petitioners were released. There could be no point in telling Mr. Tysinger, the local Assistant District Attorney, what the Department would be required to show in order to merit further consideration.

In *Ferraro* v. *Arthur M. Rosenberg Co.*, 156 F. 2, 212, it was held that when making a motion to open a default and for leave to amend a bill of particulars one must show an adequate basis for the motion. Where the Circuit Court of Appeals could not say that trial judge was clearly wrong in finding that good cause had not been shown, no abuse of discretion on the part of the trial judge was made out.

In *Sheehan* v. *Municipal Light and Power Co.*, 151 F. 2nd, 65, Judge Hand examined into the merits of the moving party when an attack was made upon a judgment.

With the general rules applicable in mind, permit us to ask Your Honors to again examine the record. The Warden in his motion to reconsider, R. 404, states that he received the paper through the mail. This paper is set out in the record, R. 406, and purports to have been signed by one Walter K. Ulrich. It is a mere statement that the Board has heard the case in the matter of violation of parole, and has ordered that the parole heretofore granted be revoked,—that this prisoner serve the remainder of his sentence originally imposed as provided by law. Your Honors will notice that no affidavit was submitted to Judge Underwood. The Warden does not claim that he knows anything about the authenticity of this paper except to say that he received it through the mail. Your Honors will notice, R. 99, that, in the response by the Warden, that official disclaimed any personal knowledge of whether the warrant was issued capriciously and without reliable information. This disclaimer was filed after the writ issued and when the case was reached for trial on October 25, 1948. R. 168. Now here again we have the Warden submitting a paper he received through the mail. He claims nothing more for it. He does not say who Mr. Ulrich might be nor does he venture a guess that the thing might be authentic.

Now, if Your Honors will go back through the record and examine the testimony of the petitioners and the depositions given by the members of the Board, and will again examine the arguments of counsel submitted to Judge Underwood, this Court will have some idea of the background, and the circumstances confronting Judge Underwood when this so-called paper was presented. We submit that Judge Underwood gave it a great deal more consideration than it deserved. Your Honors will agree upon reconsideration of this matter that if the Government really

wished to appeal to the discretion of Judge Underwood, in order to secure a reopening of the case, the Government should have made some showing as to the nature of the violation, if any, and the evidence upon which it was based. Some showing should be required as to why this so-called revocation was not presented earlier to the court. The Warden does not pretend to know when the paroles were revoked, if at all. The paper does not reveal when the Board acted. These men were arrested in July and filed their petitions before Judge Underwood in September. On October 26th, the hearings and the arguments were concluded and the Judge took the case under advisement. We quote from the Record, R. 293.

> "By the Court: I can't conceive why there should be such great secrecy in what the Government claims the violation is."

Your Honors will note that during the argument made by Mr. Gottshall for the Government, Judge Underwood requested information as to when it could be expected that the Parole Board would act, R. 323. We quote R. 325:

> "By the Court: What I am trying to do, Mr. Gottshall, I am very anxious to find out the attitude of the Board and what the Board itself has done and intends doing, and it seems to me that in all good faith and fairness that there should be no objection on the part of the Board to simply state to the petitioners what grounds they are charged with, what violations they are charged with. As I understand this record, they have not even told the petitioners what they are guilty of. * * * Yes, but the Board has said, 'we won't say anything about it, we won't tell the court. If they have any reason, I don't see any reason why they won't state it.' * * * R. 326. These men testified what happened before the Board, and the Board has not denied it. There is no evidence anything else took place other than what they said. * * * Yes, and it is strengthened by the failure of the Board to contradict

or deny it, and it is for the Board to bring in any evidence to show that it is incorrect. That's where I think the difficulty arises. The Board could have made a very simple case out of it."

Again we quote from the Record, R. 328:

"By the Court: That is what I say. I would like to have pointed out to me, this record, not what was in the mind of somebody else, or in the mind of the Board, but what this record before me shows was the basis of that parole violator warrant, what information. * * * That's what I am calling on you now, to point out what the record shows.

"By Mr. Gottshall: That is the only thing we care to put in the record at this time.

"By the Court: At this time we are closing the record.

"By Mr. Gottshall: All right, we will have to stand on the proposition of law.

"By the Court: All right.

"By Mr. Gottshall: With all respect to Your Honor."

At the conclusion of the argument, the court made the following statement, R. 337:

"By the Court: Now, as I understand it, the hearing has so developed the case that it comes down, as far as the warrant is concerned, that the only violation that the respondent charges of the parole are those charges set up in the referral. Now, I would like for counsel to go through the record and pick out and furnish to me in their memorandum, their memoranda, any evidence bearing on those particular charges, whether or not there is information that was false or not. I think, for example, if Judge Rogers had information that he considered reliable when he issued the warrant that might support the warrant, even though it proved to be false, but I think in view of the evidence here that would have to be shown by the respondent in this case. I think the petitioner has made out a case of no violation, we will say, and that these other references here that the warrant was issued when they

> weren't claiming there was any violations, so that seems to me very clearly to put on the respondent, on the Board, if they did have any information or evidence to present it to the Court, and if they didn't present it to the Court, and haven't presented it to the Court, then the Court takes the record before it, and decides on that basis. I repeat, I just can't conceive how a governmental agency will charge a man with something, and then, I mean accuse him of something, and then fail to tell him what he is charged with, especially when the matter is raised as an issue in the courts. I just don't understand it."

We quote from that said by Judge Underwood to the attorneys for the Government at such great length in order to show Your Honors a fact overlooked up to now. The Judge said over and over again that we had made out a case sufficient to throw the burden upon the Government,—to show, if it could, a legal basis for continued detention. In the light of an understanding by all concerned as to where the burden of proof rested, Your Honors, we hope, will give proper weight to the following finding made by Judge Underwood, R. 408:

> "Counsel advised the Court that they did not desire to present further evidence or argument."

Could the Judge have said it any plainer if he had used the following language:

> I have offered counsel an opportunity to present further evidence and argument, but all the Government attorneys seek is the introduction of a paper purporting to show revocation of these paroles.

So we submit that if Your Honors will examine into the background and estimate the situation the trial judge found himself in, the conduct of the Government attorneys was not such as to appeal to the discretion of the court when they moved for a new trial. Your Honors will note that at

first they stood upon a proposition of law. Then when they were asked to bring in whatever they might have and they were told by the judge that the record was being closed. They brought in nothing, except their brief, which reiterated their stand to the effect that it was a proposition of law, *i.e.* the court had no jurisdiction until the Parole Board might act. At no time did the Government attorneys state to the Court when action by the Board might be expected. Nor did they give the court any reasonable explanation as to why there should be such a great delay. The record shows that the Government attorneys allowed the matter to remain under advisement, after the submission of briefs to Judge Underwood in October, until the month of December. After the opinion was rendered the judge of his own motion gave the Government attorneys fifteen days in which to appeal, or to secure a new warrant. The Government attorneys did not ask for further time in which the Board might complete the matter and present the result. The attorneys for the Government took the opinion of the court,—waited until the fifteen days were up, and then they presented the mere naked motion to reconsider.

No doubt we would have been better fortified here if Judge Underwood had made more complete findings as to his reasons for refusing a new trial. But after Your Honors again examine the record and fully appreciate the position occupied by Judge Underwood, when confronted with this motion to reconsider, we hope Your Honors will agree that Judge Underwood could not be expected to anticipate the attitude voiced by Judge Sibley. We hope Judge Sibley will perceive that his remarks were not applicable to the ruling made by the trial judge. In this connection we quote from *Albert* v. *Patterson*, 155 Fed. 2nd, 429:

> "Nowhere in Chapter 14 of Title 28 of the United State Code Annotated, is there any provision requiring

> findings of fact in habeas corpus proceedings. Section 461 of that chapter only requires that upon issuance of the writ 'the court, or justice, or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony in argument and thereupon to dispose of the party as law and justice require.' And, as already appears the federal rules of civil procedure apply to habeas corpus proceedings only on appeal, so that the part of Rule 52A supra requiring a trial court to make findings of fact and conclusions of law is inapplicable. Thus, even if no finding of fact at all had been made by the court below, we could not set its disposition of the case aside unless we could find no reasonable basis therefore anywhere in the record. We find such basis here."

We gather from the majority opinion that Your Honors are not satisfied with the reasons given by Judge Underwood for discharging these petitioners. It is a familiar rule announced in a number of cases including that of *Iselin* v. *C. W. Hunter Cole*, 173 F.2 388, that a judgment should not be reversed merely because trial court gave wrong reason for its decision, if there are other grounds to support the judgment. We submit that Your Honors have overlooked the fact that a judgment of discharge is the only proper judgment based upon the entire record in this case. In reconsidering the judgment order entered in the case at bar, we trust that Your Honors will not overlook the rule which we quote from *Gillis* v. *Keystone Mut. Casualty Co.*, 172 F. 2, 826, 830:

> "However, in any event under Rule 61 of the Federal Rules of Civil Procedure, 28 U.S.C.A. no error in any ruling or order or in anything done or omitted by the court is ground for disturbing a judgment or order unless refusal to take such action appears to the court inconsistent with substantial justice; and the court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. This rule is

> intended for the guidance of the district court, but it should be heeded by the appellate court to make it effective. *University City* v. *Home Fire & Marine Ins. Co.*, 8 Cir., 114 F. 2d 288. In the controversy before us, there was no error prejudicial to the rights of appellants or inconsistent with substantial justice."

Now that we have again called the attention of this Court to the condition of the record, when the Warden at the last moment produced a paper received through the mail, permit us to again quote from the majority opinion, p. 11:

> " * * * and did not try at all the Warden's *pleading* presenting the orders of revocation, * * * ". (Emphasis added.)

Your Honors will perceive that the Warden presented no pleading.

In *Tyberg* v. *Warren,* 192 F. 458, in an extradition case, the messenger secured new papers after the court had held the first warrant defective. The Circuit Court discusses the regular course to be pursued, where application is made to vacate a judgment in habeas corpus and to obtain leave to file a supplemental return. Your Honors will recognize the justice of the rule, when we suggest that in the case at bar, the Government attorneys should have made a showing as to why the former order of Judge Underwood should be vacated. This should have been accompanied with a tender of a supplemental return, with the request for leave to file the same. The showing should have included the record of the Board, or a proper affidavit to show what had caused the entry of any order, when the order was made, and why it was not produced at the hearing. If the Government attorneys had placed the entire record before the court, Judge Underwood would have been in a position to determine if there was any merit

to the last minute maneuver. Cf. *Ex parte Ching Hing*, 224 F. 261, affirmed 234 F. 616.

Perhaps, after Your Honors again examine this record, Your Honors will understand why the Board did not take advantage of the original judgment order, in which Judge Underwood gave the Government fifteen days in which to secure a new warrant. Your Honors must realize that if the Board had any evidence of a violation, it would have issued a new warrant. Here is the obvious answer, overlooked by Your Honors; the warrants were issued by Judge Rogers, not on information, but because the Board wanted to revoke under its assumed power, relative to the welfare of society. A new warrant on such ground would be no better or no worse than the one issued by Judge Rogers, hence no new warrant.

Your Honors do not suppose, for a moment, that Mr. Gottshall has not inspected the record made by the Parole Board, and is not aware of the ground upon which the warrants issued and the revocations were based. Is it not fair to assume that if Mr. Gottshall found anything in the record to support the action of the Board, it would be forthcoming? Evidence is to be judged in the light of the power of the party to produce. Mr. Gottshall never claimed, and does not now claim, that the Courts have no jurisdiction to look into such record,—after completion of the administrative hearing.

One more thought on the correctness of the trial court, in refusing to re-open the case, on the showing made. The Government attorneys did not claim the benefit of any presumption and we hope Your Honors will not lose sight of the law upon this subject. If the Warden had shown up at the last moment with a certified copy of a judgment of a court, there would have been a presumption in favor of its validity, 39 C.J.S. sec. 100, p. 669. No such pre-

sumption attaches to the final orders of an administrative body. Parole Boards included. *Ex parte Bertrand,* 142 P. 2nd. 351, 61 Cal. App. 2nd. 183.

Parole Board Not a Party.

We again quote from the majority opinion, pp. 3, 10:

> "The only respondent named is the Warden of the Atlanta Penitentiary, who is not a member of the Board."
>
> "Under the present law the Warden has no part in parole matters, knows nothing about what the Board does in Washington, and is in no position to explain or defend its proceedings. The use of habeas corpus against the Warden to reach a wrong in the Board's procedure, if there be such, is not to be encouraged."

We submit that Your Honors have overlooked the fundamental traditions arising out of habeas corpus. The custodian is always required to produce the body and show his authority for holding the prisoner.

Your Honors have overlooked the very definition of the writ, which is directed to the person detaining another, commanding him to produce the body of the prisoner with the cause of his caption and detention. *Price* v. *Johnston,* 334 U.S. 266. Habeas corpus is a collateral remedy; it is independent of the legal proceeding under which the detention is sought to be justified. *Riddle* v. *Dyche,* 262 U.S. 678.

It has been repeatedly held that the court in habeas corpus may inquire into the cause of a parolee's apprehension and determine whether he had rendered himself subject to liability to serve his unexpired term by reason of his violation of the conditions of his parole. 39 C.J.S., sec. 26, p. 496.

Mr. Gottshall represented the Board members at the

taking of the depositions. R. 345. The Board is a subdivision of the Department of Justice. We quote from the record, R. 150:

> "By the Court: Anything else, gentlemen?
>
> "By Mr. Tysinger: No, except in case the writ is issued, the attorneys from the, that represents the United States Board of Parole, chief counsel, Mr. Gottshall, of the Attorney General's office, desires to be present when this writ is issued, and heard. * * *"

Your Honors would have to close your eyes to reality not to know that the warden seeks and follows the directions of the Board. The Board is advised by the Attorney General. When Your Honors say, p. 10, that:

> "The use of habeas corpus against the Warden to reach a wrong in the Board's procedure, if there be such, is not to be encouraged."

We wish that Your Honors would suggest the remedy, of habeas corpus be the wrong one. We beg leave to mention a few of our difficulties, made known to the trial court. It is important that they be kept in mind, in arriving at an understanding of the situation confronting the trial court. We did about everything we could to secure the attendance of a member of the Board. We were defeated on our motion for a subpoena *duces tecum,* because of opposition from the attorneys from the Government. R. 159. As Your Honors noticed in the opinion, p. 5, the Board members refused to tell of their proceedings or to produce the records. Your Honors say, p. 5:

> "No effort was made to force further answers."

Please bear in mind that in addition to a reluctance on our part to ask for contempt orders, these men were in the penitentiary. It would not have been wise to delay the hearing before Judge Underwood with collateral proceedings in Washington.

We could not bring our habeas corpus action in Washington, because even if we claimed that the Board had custody, it has been held that the custody must be within the jurisdiction of the court, 39 C.J.S. sec. 54, p. 598. 3 F.R.D. 360; *Goodman* v. *Roberts,* 152 F. 2nd 841; *O'Malley* v. *Hiatt,* 74 F. Supp. 44. The detention exercised by respondent must be actual and not merely formal. *McGowan* v. *Moody,* 28 App. D.C. 148; *Saunders* v. *Bennett,* 148 F. 2nd 19. We did institute direct proceedings in Chicago against the Board but the District Attorney filed a special appearance and defeated us largely on the ground that the Board was not to be found there. *Compagna* v. *United States Board of Parole,* Nos. 9710-11-12 Circuit Court, Seventh District. As Your Honors have noted, the Government attorneys claim that the Board can not be reached by means of the Administrative Procedure Act.

Motion to Dismiss

Your Honors will remember that we filed printed motions to dismiss, supported by an affidavit. Our contention is that these cases have become moot. A printed memorandum in opposition was filed by the Government attorneys. We endeavored to explain our position in oral argument. We find no mention of this motion or any disposition in the opinion as now written. We respectfully request that upon rehearing Your Honors give this matter further attention. Particularly in the light of the finding here, p. 7, that the Warden ceased to hold these petitioners under the warrants of Judge Rogers.

Your Honors will notice from the affidavit filed in support of the motion to dismiss herein that petitioners were returned to Atlanta Penitentiary as parole violators. That during the time that they were lodged in the penitentiary under the warrant they were regarded and treated as

convicts in the service of their original sentences. After they were discharged by Judge Underwood they returned to their respective homes in the Chicago district, and reported themselves to the local parole authorities. They were informed that no reports were to be required. Subsequently, the Parole Board reconsidered the matter and ordered that these petitioners resume the status of parolees. After the order of the Parole Board, petitioners complied by submitting the required reports. Such reports have been approved and accepted. Appellees have complied with the rules and regulations and have accepted the status so imposed upon them since their discharge by Judge Underwood. Therefore, it is alleged that there has been a change of custody since this appeal was perfected. Appellees are no longer in the custody of appellant. No real controversy exists between the parties and this case has become moot.

If Your Honors will keep in mind that the statute gives the Board power to not only revoke parole but to modify or restore it, Your Honors may come to a correct estimate of the meaning of the conduct of the Board. If a revocation took place before December 14, 1948, R. 406, does not the requirement of parole reports in April 1949 mean that the previous action of the Board had been reversed?

We direct the attention of Your Honors again to the brief filed in support of our motion to dismiss.

We quote from the memorandum in opposition filed by the Government attorneys, p. 2.

> "It should be apparent therefore that appellants' custody of appellees had completely ceased before either the appeal could be effected or the appellees submit parole reports, and appellees status has in no wise changed."

We dispute the allegation that the status has not changed. Your Honors must know from the record that the status

of each one of these prisoners has been changed a number of times since the original conviction.

During service of their sentence, before parole, these men were first in the custody of the then Warden at Atlanta. Then they were transferred and paroled from the custody of the Warden at Leavenworth. The warrants, held to be void by Judge Underwood, and of no importance by Your Honors, designated Atlanta and gave custody to Mr. Hiatt. After Mr. Hiatt produced the prisoners in response to the writ, they were held by virtue of the writ of habeas corpus. *Principle* v. *Ault*, 62 F. Supp. 279.

When they went out on bail, they were answerable to their bondsmen. When the Board revoked the paroles it had the power to designate any penitentiary. If it has elected to choose Mr. Hiatt as custodian, the record fails to show this fact. No service was made on the petitioners concerning the order of revocation. Is it not reasonable to infer that the revocation order has been abandoned?

We quote from the Parole Board rules, our brief p. 61:

> "The Board may consider any case of its own motion, it may add to or modify the conditions of parole at any time."

It is our contention that the Parole Board, by its conduct, has abandoned the warrant issued by Judge Rogers. The Parole Board having resumed custody in the case at bar, the warden has no further interest or power in the matter. Therefore, this appeal should be dismissed.

Since the preparation of our brief in support of our motion to dismiss, we have received the report in *Factor* v. *Fox*, 175 F. 2d 626, from which Your Honors will note that the authorities have recently been reviewed by Judge Simons.

The warrant, while in existence, gave to these petitioners

the status of a fugitive from justice. After petitioners were released by Judge Underwood, and the appeal was perfected, Judge Underwood had no more jurisdiction over them. The Parole Board then kept petitioners in some other status for some months, or until the Board wrote the letter of April 4, 1949, which letter is set out in our motion to dismiss, p. 4. The fact that the Board had the power to determine from time to time just where petitioners stood is a part of our argument. It would be a mistake if Your Honors decided the status of petitioners upon any one factor. The entire situation must be appraised. There are times in the life of a convict, when he is neither on parole, nor doing time on his sentence. *Washington* v. *Clemmer,* 169 F. 2d 300; *United States* v. *Farrell,* 87 F. 2d 957; *Zerbst* v. *Kidwell,* 304 U. S. 359. The Parole Board has the power to interrupt a parole status. This right has been exercised for the purpose of compelling a convict to complete a new sentence. As soon as Your Honors bring to mind that the Parole Board had the power to change the status of petitioners, then the next step will be for Your Honors to determine just what the Parole Board has done here.

We quote from the letter of April 4, 1949:

> "I am in receipt of a letter from Mr. George G. Killinger, Chairman, U.S. Board of Parole, advising that after considering the matter for some time with reference to your parole status since your release, the board has come to the conclusion that you are regarded as in the parole status and that monthly reports be required."

This could have been more plain, if the Board had said in so many more words, that it had abandoned the warrant, and had abandoned the order of revocation, but we contend that such is to be inferred. This letter is inconsistent with the warrant, and with the order of revocation, and the

Board should not be permitted to hold the two opposite positions at one time. The Government attorneys in their brief, here p. 10, contend that the status of these petitioners was changed when the Warden received the revocation. When petitioners returned home after their discharge by Judge Underwood, in December, 1948, they were informed that they were not on parole. In April, 1949, they were informed that the Board had decided to restore their parole status. They have been on parole since and are now on parole.

The Order of Remand

If we are compelled to return to the trial court, pursuant to the remand, permit us to request further consideration here at this time of the remand order.

If the opinion remains as written, the trial court will endeavor to follow the law of the case, and will be bound by it. Permit us to suggest that it would be helpful if Your Honors would make clear what might be expected of us, upon a new trial. Your Honors say, p. 11, that we might have leave to enlarge our pleadings. Our petition for habeas corpus has served its purpose and is defunct. As Your Honors know, the function of a petition for habeas corpus is to secure the issuance of the writ, and when that is issued, the petition has accomplished its purpose. In essence, it is merely preliminary, and ordinarily is not to be considered as part of the pleadings. The issue on which the trial and determination takes place is regularly raised on the return and the traverse thereto. 39 C.J.S. sec. 80, p. 625. *Jung Woon Kay* v. *Carr,* 88 F. 2nd 297. The answer, or traverse to the return, is the petitioners' pleading. C.J.S. sec. 99, 666. But there is nothing in the return R. 39, 99, concerning any revocation.

Our traverse was directed to the response concerning the

warrant. The warden has not incorporated any revocation, or asked to have such included in the pleadings. Be good enough to direct the manner in which the new issue should be made. More important still—what standard should be used by the trial judge in determining if we are able to show the orders revoking paroles to be a nullity. Is the burden upon us? Must the warden show more than the fact that he has received a paper in the mail? If the Board has a discretion, which is not to be reviewed, how are we to show total nullity?

If Your Honors really mean to say what we have indicated as our understanding of the majority opinion, that parolees have no rights except such as may be granted in the discretion of the Board, may we suggest that, if such be the opinion of this Court, after consideration of this petition, Your Honors so state. In such case, Your Honors should recognize the futility of a trip to the trial court.

If Your Honors should attempt to draw up another remand order, in the light of this record, as it should appear upon re-examination, Your Honors might say something like this:

> the trial court is directed to permit the respondent to show cause, if any exists, as to why the judgments should be vacated, and to that end, respondent may apply, if so advised, to enlarge his pleadings, so as to present, if he can, legal orders revoking these paroles.

Before making such order, Your Honors must consider that the Government attorneys once had an opportunity to proceed properly. We must assume that they were sufficiently familiar with the practice to have tendered a proper return, and to have attempted a showing. No need of giving them a second chance, if their conduct was deliber-

ate. The entire record reflects their attitude. If they can not be permitted to stand upon their position—perhaps they had rather have Your Honors affirm this judgment, than to tell exactly how the Board arrived at its decision.

We offer still another suggestion. Would it be proper and just for Your Honors to grant this rehearing and call upon the Government for a reply to this petition, which reply should include a fair showing as to why the paroles were revoked? As Your Honors are aware, this court has great power in the matter of determining a proper disposition to be made here. In *Johnson* v. *Chin Ah Yeit*, 14 F. 2nd, 953, from an order discharging relator, the Commissioner appealed. It was held that the District Court improperly tried the issue whether the alien was the son of an American citizen, without first ascertaining that there was some defect in the proceedings before the Commissioner. We quote:

> "Under these circumstances the next question is whether the case should be sent to the court below for a trial of the jurisdictional question or whether on the present record this court should determine that question. We think the latter is the proper course."

Whereupon the Circuit Court examined the evidence in the record and decided the issue against the alien. The order of the District Court discharging the alien from custody was set aside, the writ discharged, and he was remanded to the custody of the Commissioner.

We suggest that the opposite result is within the power of this Court. Your Honors have enough of the facts in the record to make a final disposition here, one way or another. If Your Honors hold that these petitioners should be remanded, final judgment might be entered here. If, upon rehearing, Your Honors agree with our contentions and uphold the trial court, a mere affirmance would

suffice, but Your Honors have the power to enter a more complete judgment, taking into consideration the revocation, as well as the reinstatement of petitioners on parole.

We trust that Your Honors will perceive that we have nothing to fear, if the truth be told. Hope springs eternal and we still hope for justice. We pray for a rehearing.

As Your Honors know, our co-counsel, Mr. Andrews, has been elevated to the bench. His former partner, Mr. Nall has been good enough to advise with us. Limitations being as they are concerning time and distance we must say that the work is ours and we are responsible for all errors of omission and commission.

Respectfully submitted,

WM. SCOTT STEWART,
Counsel for Appellees.

A. WALTON, NALL,
Of Counsel.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 10 1949
LRP

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DIRECTOR, FBI ROUTINE

LOUIS CAMPAGNA, WAS., ET AL, BRIBERY, PAROLE MATTERS. SEVENTH CIRCUIT COURT OF APPEALS ON DECEMBER EIGHT LAST RENDERED OPINION IN CASE NUMBER NINE SEVEN EIGHT EIGHT, U.S. EX REL. PAUL DE LUCIA, PETITIONER - APELLEE VS. THOMAS P. O-DONOVAN, U. S. MARSHAL, RESPONDENT- APPELLANT, AFFIRMING THE JUDGMENT OF USDC JUDGE IGOE, DIRECTING THE RELEASE OF DE LUCIA ON A WRIT OF HABEAS CORPUS. IN ITS OPINION THE COURT HELD THAT BY RESPONDENTS DEMURRER TO THE TRAVERSE FILED BY PETITIONER TO THE RETURN OF THE PAROLE BOARD WARRANT, RESPONDENT QUOTE UNQUESTIONABLY ADMITTED END QUOTE ALL OF THE ALLEGATIONS OF FACT IN THE TRAVERSE, THE PRINCIPAL ONE BEING THAT PETITIONER HAD NOT VIOLATED HIS PAROLE AND THE PAROLE BOARD HAD NO INFORMATION THAT HE HAD AT THE TIME THE WARRANT WAS ISSUED. IT HELD FURTHER THAT AS ADMITTED BY RESPONDENT WHERE THE PAROLE WARRANT HAS BEEN ISSUED ARBITRARILY THE DISTRICT COURT IS NOT BARRED FROM DETERMINING THE VALIDITY OF THE WARRANT AND THIS RULE SEEMS DECISIVE IN THIS CASE. IT STATED QUOTE TO US IT SEEMS CLEARLY ARBITRARY AND CAPRICIOUS TO ISSUE A PAROLE WARRANT WITHOUT ANY INFORMATION RELATIVE TO A PAROLE VIOLATION BY THE ONE AGAINST WHOM IT IS DIRECTED, WHEN AS HERE, THE STATUTE MAKES RELIABLE INFORMATION A NECESSARY CONDIT-

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DEC 15 1949

END PAGE ONE

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DEC 30 1949

12/10/49

ION PRECEDENT TO A VALID WARRANT. IT MAY WELL BE THAT HAD THERE BEEN, IN THIS CASE, ANY INFORMATION ON THE PART OF THE BOARD MEMBER WHO ISSUED THE WARRANT THAT PETITIONER HAD VIOLATED HIS PAROLE, THE COURT WOULD HAVE HAD NO POWER TO INTERFERE AND DETERMINE WHETHER THAT INFORMATION WAS OR WAS NOT RELIABLE. BUT HERE IT WAS ADMITTED BY RESPONDENTS DEMURRER THAT THERE WAS NO INFORMATION OF ANY VIOLATION BY RELATOR END QUOTE. ALSO QUOTE IT SEEMS CLEAR THAT WHERE IT IS ASSERTED AND THE PROOF SHOWS THAT THE ADMINISTRATIVE BODY HAS FAILED TO COMPLY WITH THE STATUTE AND HAS, THEREFORE, ACTED WITHOUT STATUATORY AUTHORTY, THE DISTRICT COURT HAS JURISDICTION OF THE PROCEEDINGS END QUOTE. THE OPINION TOOK COGNIZANCE OF THE OPINION OF THE FIFTH CIRCUIT COURT OF APPEALS IN HIATT VS. CAMPAGNA AND GIOE, POINTING OUT THAT THE LATTER HOWEVER WERE ARRESTED ON THE PAROLE WARRANTS AFTER SEPTEMBER ONE, FORTYEIGHT THE DATE ON WHICH REVISED TITLE EIGHTEEN BECAME EFFECTIVE, AND THEREFORE THAT CASE -WAS DECIDED UNDER A STATUTE ENTIRELY DIFFERENT FROM THAT WHICH CONTROLS HERE.- QUOTE ANOTHER DISTINCTION, READILY APPARENT, IS THAT THE RELATORS IN THE FIFTH CIRCUIT COURT WERE NOTIFIED IN WRITING OF THE PAROLE VIOLATIONS WITH WHICH THEY WERE CHARGED, WHEREAS THE RELATOR IN THIS CASE WAS NEVER MADE AWARE OF ANY CONDITIONS OF HIS PAROLE WHICH HE WAS CHARGED WITH VIOLATING. THERE, THE FINDING OF THE DISTRICT

COURT WAS THAT THE INFORMATION ON WHICH THE WARRANTS HAD BEEN ISSUED WAS NOT RELIABLE. HERE, THE COURT FOUND THAT THERE WAS NO INFORMATION OF ANY KIND WHATEVER END QUOTE.

MC SWAIN

CORR. PAGE 2, LINE 17, WORD 10 "SHUD BE HAVE COURT INSERTED AFTER IT."

END AND ACK PLS

CGO R-1 WA

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Ladd

DATE: December 12, 1949

FROM : Mr. Rosen

SUBJECT: LOUIS CAMPAGNA, was, et al.
BRIBERY
PAROLE MATTERS

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP3 AlCw

PURPOSE:

To advise the Seventh Circuit Court of Appeals, Chicago, has affirmed the decision of the U. S. District Court, Chicago, freeing subject Paul DeLucia on a writ of habeas corpus. The court distinguished this case from one decided on November 10, 1949, in the Fifth Circuit Court of Appeals, New Orleans, in which two other subjects of this case, Louis Campagna and Charles Gioe, were ordered returned to prison. The adverse decision by the Seventh CCA apparently resulted from the Government's pleadings, which, according to the decision, admitted DeLucia's allegations that he had not violated his parole and that the Parole Board had no information that he had at the time the parole violator's warrant was issued. This was not in accord with the facts developed in the Bureau's investigation. The Department in this case refused to present any evidence, electing to appeal on the ground the District Court had no jurisdiction.

FACTS:

Campagna and four co-subjects who have been described as ex-Capone gangsters were released on parole on August 13, 1947, after having served just over one-third of their ten-year prison sentences which had been imposed by the U. S. District Court, New York, upon their convictions for violation of the Anti-Racketeering Statute. Shortly after subjects were paroled, Fred F. Busbey, then a Republican Congressman from Illinois, became interested in the case and advised the Attorney General that he, Busbey, had been informed that there had been an indication of bribery in the granting of these paroles. At the request of the Attorney General, the Bureau conducted a full investigation which did not disclose any criminal irregularity in the granting of the paroles. During the course of the Bureau's investigation, information was developed indicating that statements made by subjects to their parole officers were incorrect. Copies of all reports were furnished to the Attorney General. The Department made available to the U. S. Board of Parole this information developed during the Bureau's investigation. Thereafter, the Board of Parole revoked the paroles of subjects Campagna, Gioe, and Paul DeLucia. DeLucia contested his arrest as a parole violator in a writ of habeas corpus filed in the U. S. District Court, Chicago, on June 16, 1948. The District Court granted this writ, and this decision was affirmed on December 8, 1949, by the Seventh Circuit Court of Appeals.

Campagna and Gioe were freed on writs of habeas corpus granted by the District Court, Atlanta, on December 4, 1948. The Government appealed this

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order to the Fifth Circuit Court of Appeals, which reversed the decision of the District Court on November 10, 1949. In connection with this decision, Campagna and Gioe have filed a petition for a rehearing.

DECISION BY SEVENTH CCA:

In its opinion, the court held that the Government, by filing a demurrer to the traverse filed on behalf of subject DeLucia to the return of the Parole Board warrant, "unquestionably admitted" all of the allegations of fact in the traverse, the principal one being that DeLucia had not violated his parole and the Parole Board had no information that he had at the time the warrant was issued. The court further held that, as admitted by the Government, where the parole warrant had been issued arbitrarily the District Court was not barred from determining the validity of the warrant. The decision stated, "To us it seems clearly arbitrary and capricious to issue a parole warrant without any information relative to a parole violation by the one against whom it is directed, when as here, the statute makes reliable information a necessary condition precedent to a valid warrant. It may well be that had there been, in this case, any information on the part of the board member who issued the warrant that petitioner had violated his parole, the court would have had no power to interfere and determine whether that information was or was not reliable. But here it was admitted by respondent's demurrer that there was no information of any violation by relator."

The opinion took cognizance of the decision by the Fifth Circuit Court on November 10, 1949, in the case involving subjects Campagna and Gioe, pointing out that the latter subjects were arrested on parole warrants after September 1, 1948, the date on which revised Title 18, United States Code, became effective, and therefore that case was decided under an entirely different statute. In this connection the court said, "Another distinction readily apparent is that the relators in the Fifth Circuit Court were notified in writing of the parole violations with which they were charged, whereas the relator in this case was never made aware of any conditions of his parole which he was charged with violating. There the finding of the District Court was that the information on which the warrants had been issued was not reliable. Here the court found that there was no information of any kind."

ACTION:

It is noted particularly that after the completion of all investigation requested by the Department in 1948, the Bureau has had no part in the revocation of the paroles in this case. This has been handled by the Parole Board and the Department, and the Bureau has merely been following the litigation in this connection. The Atlanta, Chicago, and New Orleans Divisions

have been instructed to follow appellate proceedings in this case and to advise the Bureau of all developments. The Department has not yet in the DeLucia appeal indicated whether it will request a rehearing or whether it will seek certiorari to the Supreme Court.

ED FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: December 20, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS COMPAGNA, was, ET AL
BRIBERY; PAROLE MATTERS
(Bufile 58-2000)

Remylet 12-7-49.

By letter dated December 16, 1949, Clerk of the U. S. Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana, advised U. S. Attorney for the Northern District of Georgia that the Circuit Court of Appeals had on that day denied the petition for re-hearing filed in behalf of LOUIS COMPAGNA and CHARLES GIOE.

In the opinion handed down by Judges HOLMES, WALLER, and SIBLEY, Judge WALLER, concurring in the result, stated that although he adhered to his original dissent, he agreed that under Rule 29 a motion for re-hearing should be denied.

Assistant U. S. Attorney HARVEY H. TYSINGER advised that he had been informed that the Attorneys for COMPAGNA and GIOE planned to take the matter before the U. S. Supreme Court.

New Orleans Office is requested to maintain contact with OAKLEY F. DODD, Clerk, U. S. Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana, and to immediately advise the Bureau of any action on behalf of COMPAGNA and GIOE in this matter.

DEFERRED ~~ACCORDING~~

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2 cc: New Orleans

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EX. - 101

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FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 22 1949

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Mr. Tolson
Mr. Ladd
Mr. Clegg
Mr. Glavin
Mr. Nichol
Mr. Rosen
Mr. Tracy
Mr. Harbo
Mr. Mohr
Tele. Room
Mr. Nease
Miss Gandy

FBI NEW ORLEANS 12-22-49 11-15 AM TP

DIRECTOR, FBI

ATTENTION . MR. ROSEN.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY Sesalas

LOUIS CAMPAGNA, WAS., ETAL, BRIBERY, PAROLE MATTERS. REHEARING ON WRIT OF HABEAS CORPUS DENIED FIFTH CIRCUIT COURT OF APPEALS, DECEMBER SIXTEEN LAST. MOTION FOR STAY OF MANDATE GRANTED. SUBJECTS WILL BE ALLOWED TO REMAIN OUT OF JAIL UNTIL THE SUPREME COURT CAN REVIEW CASE.

LOPEZ

END

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G.I.R.-7

52 JAN 10 1950

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO : Mr. Ladd

FROM : A. Rosen

DATE: December 19, 1949

Call: 10:45 AM

SUBJECT: LOUIS CAMPAGNA, was., et al.
BRIBERY - PAROLE MATTERS

Tolson
Ladd
Clegg
Glavin
Nichols
Rosen
Tracy
Harbo
Mohr
Tele. Room
Nease
Candy

SAC Lopez of the New Orleans Division stated that Mr. Dodd, Clerk of the Fifth Circuit Court of Appeals, New Orleans, advised that today, December 19, subjects Campagna and Gioe filed with the Clerk a Motion for Stay of Mandate. The Clerk will now place this Motion before the court for consideration. SAC Lopez observed that although subjects Campagna and Gioe have not as yet actually filed an appeal of their case to the United States Supreme Court, the filing of the present Motion for Stay of Mandate is a definite indication that such an appeal will be taken. The effect of the Motion for Stay of Mandate, if granted by the court, will be to allow subjects Campagna and Gioe to remain at large pending disposition of appeal proceedings.

SAC Lopez advised that the United States Fifth Circuit Court of Appeals at New Orleans on December 16, 1949 denied the application for a rehearing which was filed by Louis Campagna and Charles Gioe.

Campagna and Gioe, each serving a ten-year prison sentence imposed by the U. S. District Court, New York, were freed on writs of habeas corpus granted by the District Court, Atlanta, Georgia, on December 4, 1948. The Government appealed this order to the Fifth Circuit Court of Appeals, which reversed the decision of the District Court on November 10, 1949. Thereupon the attorneys for subjects Campagna and Gioe filed a petition for rehearing with the Fifth Circuit Court of Appeals, New Orleans, which was denied by the court on December 16, 1949.

SAC Lopez was instructed to immediately report all developments on the Motion for Stay of Mandate and any subsequent appeal as soon as it becomes known to the New Orleans Division.

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EX. - 101

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EVANS

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Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

#1

Ex-Capone Men Denied Rehearing on Paroles

New Orleans, Dec. 18 (AP).—The United States Fifth Circuit Court of Appeals, yesterday denied rehearing for two former members of the Capone gang whose paroles from the Federal Penitentiary in Atlanta, Ga., were revoked in July, 1948.

The men, who were convicted in the southern district of New York, are Louis Compagna and Charles Gioe. They were sentenced to the penitentiary for 10 years for violating the antiracketeering law by the use of threats of labor trouble to obtain large sums of money from major movie producers.

They were given a parole in 1927 after serving only three years.

12/19/49
N.O. Called
Lopez and Telephone Rep.
requested JHR

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DATE 3-15-95 BY SP5 CA/CW

Bur file 58-2000
Case being handled by Supervisor Evans - Supervisor Shannon states up-to-date tickles have been furnished.
D.M.R.

Memo to Ladd
12/19/49
JHR

WASHINGTON POST
Date 12-19-49

58-2000-2028
ENCLOSURE

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

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DATE 3/2/95 BY SP5a/cw

58-2000 - 2028

THE NEWS
Date 12-19-49

ENCLOSURE

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: December 29, 1949

FROM : SAC, Atlanta

SUBJECT: LOUIS CAMPAGNA, was, et al
BRIBERY; PAROLE MATTERS
(Bureau file 58-2000)

Reference is made to the Bureau's request that the Bureau be notified at 15 day intervals concerning the status of this case.

As this matter is now pending a decision in the U. S. Circuit Court of Appeals for the Fifth Circuit, New Orleans, Louisiana, all information of interest to the Bureau must necessarily emanate from that Court.

In view of this fact, the New Orleans Division is requested to keep the Bureau informed at 15 day intervals as to the status of this matter and the case is being considered Referred Upon Completion to New Orleans.

Since my letter of December 7, 1949, there has been no change in the status of this case reported to the Atlanta Office by the U. S. Attorney's Office, Atlanta, Georgia.

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GHT:fg
cc: New Orleans

G.I.R.

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60 JAN 26 1950

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: January 4, 1950

FROM: SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was, et al
BRIBERY--PAROLE MATTER
(Bufile 58-2000)

Remytel December 9, 1949.

For the completion of the Bureau files there are enclosed two formal copies of the opinion of the United States Circuit Court of Appeals in the case, Number 9788, of the U. S. ex rel PAUL DeLUCIA, Petitioner-Appellee vs. THOMAS P. O'DONOVAN, United States Marshall.

The Bureau will be kept advised of Chicago developments in this matter.

[redacted]

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ENCLOSURE ATTACHED

EX-8

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EX-8

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DATE 3/2/95 BY SP5 CA/AW

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ENCLOSURES: BUREAU

LOUIS CAMPAGNA, was. et al
BRIBERY--PAROLE MATTER

CGO. File 58-194

2 formal copies of opinion of U. S. Circuit Court of Appeals

In the

United States Court of Appeals

For the Seventh Circuit

OCTOBER TERM AND SESSION, 1949.

No. 9788.

THE UNITED STATES OF AMERICA, *ex rel.* PAUL DE LUCIA, *Petitioner-Appellee,* vs. THOMAS P. O'DONOVAN, United States Marshal, *Respondent-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

December 8, 1949.

Before MAJOR, *Chief Judge,* FINNEGAN and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* Respondent arrested the relator pursuant to a parole warrant issued by a member of the United States Board of Parole. On the day he was taken into custody, June 15, 1948, relator filed a petition for a writ of habeas corpus, to which, on the same day, respondent filed a formal return. Relator then filed a lengthy traverse, to which respondent demurred. The District Court overruled the demurrer and ordered respondent to answer within ten days; respondent, however, elected to stand by his demurrer, whereupon the court entered judgment discharging relator.

Respondent asserts error in that, (1), the judgment was based upon certain statements appearing in the relator's traverse, which, because they are, as respondent argues, conclusions of law rather than allegations of fact, were not admitted by the demurrer; (2), the court, having no authority to shorten the statutory time within which the

return to the petition for writ of habeas corpus might be filed, wrongfully required respondent to file his return *instanter;* and, (3), the court was precluded from reviewing the facts upon which the parole board's jurisdiction was based until the administrative proceedings initiated by the issuance of the parole warrant had been completed.

The relator, with others, had been found guilty of conspiracy to violate the Anti-Racketeering Act, United States Code, Title 18, Section 420, and sentenced to a term of ten years. After he had been released on parole, in August, 1947, a congressional subcommittee conducted an investigation into the grant of paroles to relator and his fellow conspirators. Hearings began September 25, 1947, and ended June 7, 1948. On June 15, 1948, Fred S. Rogers, a member of the parole board, issued a warrant reciting that he had reliable information that relator had violated the conditions of his parole and directing that he be arrested. On the day following relator was taken into custody upon this warrant and immediately filed his petition for a writ of habeas corpus.

On June 16, 1948, the court directed that the writ issue returnable *instanter.* Less than three hours later, a return was filed, showing that respondent had custody of relator by virtue of the warrant, and alleging that, because the court was without jurisdiction to review the issuance of such warrant by a member of the United States Parole Board or to inquire into the custody of one who was held under it, the petition failed to disclose any ground upon which relief could be granted. To this return, the relator filed a traverse, the pertinent parts of which averred that at the hearings conducted by the subcommittee, Mr. Rogers, the member of the board who issued the warrant, had testified on June 7, 1948, barely a week before issuance of the warrant, that relator had not violated the conditions of his parole. The relator included also his own affidavit that he had not at any time violated the terms of his parole. To this traverse, respondent demurred. The court overruled the demurrer, *U. S. ex rel. De Lucia* v. *O'Donovan,* 82 F. Supp. 435, and directed respondent to answer within ten days. When respondent elected to stand on the demurrer, the relator was discharged.

Since a judgment may not be reversed for error not of prejudicial nature, *Deery* v. *Cray,* 5 Wall. 793, *Gilman* v. *Higby,* 110 U. S. 47, *Vicksburg & Meridian Railroad* v. *O'Brien,* 119 U. S. 99, *Seaboard Air Line* v. *Moore,* 228 U. S. 433, we need not consider the contention that the District Court erred in ordering a returnable *instanter,* for, although respondent contends that under the applicable statute (28 U. S. C., Section 456) he should have been given three days within which to file his return, it is clear that no prejudice has resulted from the order that the return be filed immediately.

The pertinent statute, Title 18 U. S. C., Section 717, is: "If the warden of the prison or penitentiary from which said prisoner was paroled or the Board of Parole or any member thereof *shall have reliable information that the prisoner has violated his parole,* then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner." (Emphasis supplied.) The trial court, having considered the specific averments of the traverse, found that it alleged specifically that no member of the board had any information of violation of any of the terms and conditions of De Lucia's parole when the warrant was issued and that this allegation was admitted by respondent's demurrer to the traverse.

Respondent argues that the pleadings do not support the conclusion; he contends that, because a demurrer admits only such facts as are well pleaded, he did not admit that the warrant was issued without any information relative to a parole violation by the relator, that being a conclusion of law rather than a mere allegation of fact. The relator insists that this argument constitutes a departure from the position taken by respondent in the court below, where, if the objection had been raised, relator could have met it by amending his pleading.

The record made in the District Court supports relator's statement that respondent failed to attack the sufficiency of petitioner's pleadings in the trial court. Consequently, he should not be allowed to do so for the first time in this court. Moreover, the respondent's argument, considered on its merits, seems to us to overlook the fact that this court, in resolving this issue, must go beyond a simple determination of whether, as an abstract proposition, a demurrer admits an allegation that a warrant has been issued without

any information as to a parole violation; it must decide also whether, upon all the allegations of fact which were unquestionably admitted by respondent's demurrer, the trial court was justified in concluding that there was no information with respect to any such violation in the possession of the board member who issued the warrant.

Respondent's position with respect to this issue is best illustrated by the following quotation from his brief: "The petitioner's statement that he did not violate parole in the interim is his own conclusion and is not admitted by respondent's demurrer. As a matter of hard logic, the *petitioner will have to allege facts concerning every moment of every hour from June 15, 1948.* That he has not done. There is nothing before the court in the pleadings to show what activities, innocent or otherwise, the relator was engaged in during this period. *In the absence of such allegations the petitioner's conclusion that he did not violate parole cannot be admitted.*" (Emphasis supplied.) To adopt this viewpoint in a case where, as here, the facts have been alleged in great detail (petitioner's traverse was some 625 pages in length) would be to impose an unreasonable burden on the pleader as well as an unrealistic limitation on the lower court. We conclude that respondent's contention must be rejected on the merits, especially in view of the fact that it has been urged for the first time in this court. 4 C.J.S. 465, citing cases.

In this connection the District Court said: "De Lucia's traverse to the Marshal's return to the writ does not contend that the information upon which the parole board member issued the warrant was not reliable. The traverse alleges substantially that the members of the parole board did not have any information in respect to a violation of the terms and conditions of De Lucia's parole when the warrant was issued. It alleges that the member of the board who issued the warrant had previously testified before the Congressional Committee that no report or evidence of a violation of parole by De Lucia had been received by the board. And it asserts that the parole warrant was issued solely because the parole board member had been pressed to such action by the legislative committee. The legal effect of the demurrer filed by the United States Attorney acting on behalf of the parole Board member is to say that even if all of the allegations in the traverse are true, nevertheless

the detention of De Lucia under the parole warrant is legal and may not be inquired into by this court." We cannot reject a finding of the trial court unless it is clearly erroneous. Federal Rules of Civil Procedure, rule 52, 28 U. S. C. A. following section 723c, *Sunal* v. *Large,* 157 F. 2d 165 affirmed 332 U. S. 174, *Farrell* v. *Lanagan,* 166 F. 2d 845; *Willis* v. *Hunter,* 166 F. 2d 721; *United States* v. *Niersthei-mer,* 166 F. 2d 87. The record here is such that we cannot say as a matter of law that the findings are erroneous.

Respondent contends also that the rule requiring the exhaustion of administrative remedies, precluded the court below from discharging the relator from custody. His position is that, under the rule, the District Court was barred from making a determination of invalidity of the warrant until after completion of the parole board hearing, the culmination of the administrative proceeding provided for by statute (18 U. S. C. A., Sections 717, 719 and 723) and inaugurated by issuance of the warrant. Respondent insists that this holds true in all cases save one,—where the parole warrant has been issued arbitrarily. The admitted existence of this exception to the rule seems to us decisive in the case now before this court, for to us it seems clearly arbitrary and capricious to issue a parole warrant without any information relative to a parole violation by the one against whom it is directed, when, as here, the statute makes "reliable information" a necessary condition precedent to a valid warrant. It may well be that had there been, in this case, any information on the part of the board member who issued the warrant that petitioner had violated his parole, the court would have had no power to interfere and determine whether that information was or was not reliable. *United States* v. *George S. Bush & Co., Inc.,* 310 U. S. 371; *Christianson* v. *Zerbst,* 89 F. 2d 40, 10th Cir., *Rogoway* v. *Warden,* 122 F. 2d 967, 9th Cir., *United States ex rel. Jacobs* v. *Barc,* 141 F. 2d 480, 6th Cir. But here it was admitted by respondent's demurrer that there was no information of any violation by relator. The court was correct in concluding that under such circumstances, issuance of the warrant was "arbitrary and capricious and not warranted by law," and the remedy of habeas corpus available to the petitioner. *Clark* v. *Surprenant,* 94 F. 2d 969, 9th Cir., *Christianson* v. *Zerbst,* 89 F. 2d 40, 10th Cir.

In *Varney* v. *Warehime,* 147 F. 2d 238 at 243, 6th Cir., c. d. 325 U. S. 882, the court said: "Appellants insist that this action was brought prematurely because appellees had not exhausted their remedies under the procedural regulations of the Director of Good Distribution. Failure to exhaust administrative remedies generally precludes resort to the courts. *Highland Farms Dairy, Inc., et al.* v. *Agnew et al.,* 300 U. S. 608, 616, 57 S. Ct. 549, 81 L. Ed. 835; *Natural Gas Pipeline Company* v. *Slattery,* 302 U. S. 300, 311, 58 S. Ct. 199, 82 L. Ed. 276. However, this is not an ironclad rule and it has no application where the defect urged goes to the jurisdiction of the administrative agency. *Skinner & Eddy Corp.* v. *United States,* 249 U. S. 557, 562, 39 S. Ct. 375, 63 L. Ed. 772."

In the last mentioned case, the government insisted that petitioners seeking an injunction against the Interstate Commerce Commission, should have applied to the Commission for definite rates before resorting to jurisdiction in equity. The court denied the contention, Mr. Justice Brandeis speaking for the court, saying: "The contention is that the Commission has exceeded its statutory powers; and that, hence, the order is void. In such a case the courts have jurisdiction of suits to enjoin the enforcement of an order, even if the plaintiff has not attempted to secure redress in a proceeding before the Commission. *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42, 49, 56 L. ed. 83, 88, 32 Sup. Ct. Rep. 22; *Louisiana & P. R. Co.* v. *United States,* 209 Fed. 244, 251; *Atlantic Coast Line R. Co.* v. *Interstate Commerce Commission,* 194 F. 449, 451. The Sacramento Case (*United States* v. *Merchants & Mfrs. Traffic Assoc.,* 242 U. S. 178, 61 L. ed. 233, 37 Sup. Ct. Rep. 24) was a case of this character. Compare *Interstate Commerce Commission* v. *Louisville & N. R. Co.,* 227 U. S. 88, 92, 57 L. ed. 431, 433, 33 Sup. Ct. Rep. 185; *Southern P. Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, 55 L. ed. 283, 31 Sup. Ct. Rep. 298. The district court properly assumed jurisdiction of this suit." See also *Goldman* v. *Am. Dealers Service,* 135 F. 2d 398; *U. S. Alkali Assoc.* v. *U. S.,* 325 U. S. 196.

From the cases cited it seems clear that where it is asserted and the proof shows that the administrative body has failed to comply with the statute and has, therefore, acted without statutory authority, the District Court has

jurisdiction of the proceedings. The rule requiring exhaustion of administrative remedies does not apply when the administrative body has exceeded its statutory authority.

The case of *Hiatt* v. *Compagna and Gioe,* — F. 2d —, recently decided by the Court of Appeals for the Fifth Circuit, involved issuance of parole warrants for the arrest of two persons who, having been tried with and convicted at the same time as the relator in this case, had also been released on parole. After they had been taken into custody (it is significant that they were arrested after September 1, 1948, the date on which Revised Title 18, United States Code, became effective), Compagna and Gioe filed petitions for habeas corpus. Prior to hearings on their petitions, the board conducted a proceeding to determine, whether their paroles should be revoked. Before this hearing had been concluded, however, the habeas corpus hearings were completed, and the District Court found, on the basis of the uncontradicted testimony of the two petitioners, that information upon which the warrants had issued was not reliable. It was accordingly ordered that petitioners be released unless, within 15 days, new warrants based on reliable information had been issued. No such warrants having been issued, although the board did announce its decision that the paroles should be revoked, the District Court ordered that the petitioners be discharged. On appeal, the judgment was reversed, the Court of Appeals relying on the fact that Revised Title 18 had made substantial changes in the procedure to be followed in revoking paroles.

Several distinctions can be drawn between the case before this court and the one in the Fifth Circuit. The most obvious is that the latter case was decided under a statute entirely different from that which controls here. Here the issuance of the warrant, the arrest of petitioner, and the issuance of the writ all occurred before the effective date of Revised Title 18; consequently, this court must look to the law under the former statute (18 U. S. C. A., Sections 717, 719 and 723). Another distinction, readily apparent, is that the relators in the Fifth Circuit were notified in writing of the parole violations with which they were charged, whereas the relator in this case was never made aware of any conditions of his parole which he was charged with violating. There, the finding of the District Court was that the information on which the warrants had been issued

was not reliable; here, the court found that there was no informataion of any kind whatever. These significant distinctions serve to resolve the otherwise apparent inconsistency in the decisions in the two cases.

The judgment is affirmed.

A TRUE COPY:
TESTE:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit.

USCA 2203 Champlin-Shealy Co., Chicago—12-14-49—50

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: January 11, 1950

FROM : SAC, NEW ORLEANS

SUBJECT: LOUIS CAMPAGNA, was., ETAL
BRIBERY; PAROLE MATTERS
(Bureau file 58-2000)

OAKLEY F. DODD, Clerk, United States Court of Appeals, Fifth Circuit, New Orleans, Louisiana, advised on January 6, 1950 that he had received on January 5, 1950, a copy of a letter from WILLIAM SCOTT STEWART, Chicago, Illinois to CHARLES ELMORE CROPLEY, Clerk, Supreme Court of the United States, Washington, D. C. This letter states that STEWART is enclosing appearance and a check to cover the docketing of the case of LOUIS CAMPAGNA and CHARLES GIOE vs. WILLIAM H. HIATT, Warden, United States Penitentiary, Atlanta, Georgia. This letter further states that the original petition with the required number of copies will be mailed at the end of the week.

DODD further advised that he had in his possession a motion submitted by STEWART for presentation to the United States Court of Appeals at New Orleans calling for him to forward the United States Superme Court five volumes of printed transcript of record of trial and one volume of hearing before a Congressional Sub-Committee. DODD said he would present this motion as soon as he learns of the filing of the petition for certiorari with the United States Supreme Court. This petition must be filed by January 21, 1950 inasmuch as the mandate of the United States Court of Appeals was stayed on December 21st for thirty days or such time as the matter is pending before the United States Supreme Court.

DODD will be recontacted after January 21, 1950 and at fifteen day intervals thereafter in accordance with the instructions contained in Atlanta letter to the Bureau dated December 29, 1949 unless the Bureau desires to follow this matter by contacting CHARLES ELMORE CROPLEY of the United States Supreme Court and so advise this office.

MWC:gp
58-69

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INDEXED - 6 3
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EX-87

DEPARTMENT OF JUSTICE
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HEREIN IS UNCLASSIFIED
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51 JAN 30 1950

STANDARD FORM NO.

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: January 30, 1950

FROM : SAC, CHICAGO

SUBJECT: LOUIS CAMPAGNA, Was., ET AL
BRIBERY - PAROLE MATTER
(Bufile 58-2000)

On January 11, 1950 OTTO KERNER, JR. filed a petition for rehearing before the U. S. Circuit Court of Appeals, Chicago, Illinois in their case number 9788.

Two copies of this petition are enclosed.

DEFERRED RECORDING

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58-2000-2032

RECORDED - 31 FEB 1 1950

EX-103

ENCLOSURE BEHIND FILE

EX-103

ENCLO. ATTACHED

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5/2/95 BY SP5a/cw

52 FEB 14 1950

ENC. (2) TO DIRECTOR, FBI

LOUIS CAMPAGNA, Was., ET AL
BRIBERY - PAROLE MATTER

Two copies of petition for rehearing before U.S. Circuit Court of Appeals, Chicago, case number 9788.

In the

United States Court of Appeals

For the Seventh Circuit

No. 9788

UNITED STATES OF AMERICA, ex rel. PAUL De LUCIA, *Petitioner-Appellee,* *vs.* THOMAS P. O'DONOVAN, United States Marshal, *Respondent-Appellant.*	On appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable Michael L. Igoe, Judge Presiding.

RESPONDENT-APPELLANT'S PETITION FOR REHEARING.

OTTO KERNER, JR.,
United States Attorney.

JOHN PETER LULINSKI,
Assistant United States Attorney.

J-31604 The Gunthorp-Warren Printing Co., Chicago—1-11-50—50

In the

United States Court of Appeals

For the Seventh Circuit

No. 9788

UNITED STATES OF AMERICA, ex rel. PAUL De LUCIA, *Petitioner-Appellee,* *vs.* THOMAS P. O'DONOVAN, United States Marshal, *Respondent-Appellant.*	On appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable Michael L. Igoe, Judge Presiding.

RESPONDENT-APPELLANT'S PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

1. The Court, in its opinion, states that there is a variance between the theory advanced by the respondent before the bar of this Court and the theory of the respondent advanced before the Court below. This conclusion of the Court is predicated upon a theory of the petitioner and not upon the record. We include as a part of our petition for rehearing the Brief and Argument of the Respondent in support of his demurrer and Respondent's Reply Brief, as filed in the Court below. These are set

forth in full in the appendix to this petition. A reading of the respondent's brief and reply brief as filed in the Court below reveals that the respondent did not change his position in any respect.

As set forth in his brief below, one aspect of the respondent's position was stated as follows:

> "We shall demonstrate first, that the petitioner falsely premises his argument upon a set of facts tailored to fit the conclusion he seeks to establish. For example, he says that up to June 7, 1948, when Judge Rogers testified before a Congressional Committee, he allegedly had no knowledge of any violation by the petitioner; that consequently, he could not have committed any violation, at least up to and including June 7, 1948. Then the petitioner naively alleges that he himself will testify that he did not commit any violation from June 7, 1948, to the date of the issuance of the warrant. This self-serving conclusion is, of course, not admitted by the respondent's demurrer to the traverse. He further seeks to buttress his non-violation by stating that local parole officials would testify that he did not violate parole.
>
> "On the effect of the testimony of a local parole officer, which is contrary to a parole violator's warrant, see *Klinkner* v. *Squier*, 144 F. 2d 490.
>
> "The petitioner further, in attempting to establish non-violation, makes reference to his daughter's wedding and the expenditures connected therewith, and the fact that association with the seven hundred guests would not constitute a violation of his parole. What petitioner cannot seem to grasp as a matter of hard logic is that the reliable information upon which Judge Rogers acted may have been given to him five minutes before he issued the warrant, or may in no wise be connected with the information to which petitioner seeks to limit Judge Rogers. In effect, what the petitioner is attempting to do is to persuade the Court that the only information upon which Judge Rogers could have acted in issuing the parole warrant is the information contained in his petition and

> in his traverse. This is the building of a conclusion upon a conclusion—the first conclusion being that the only information available to Judge Rogers is that stated so carefully by the petitioner—and secondly, the self-asserted conclusion that the petitioner has not violated his parole. It is tantamount to pleading not guilty to an indictment and asking for an immediate release in habeas corpus before the prosecution may introduce its evidence.
>
> "One might amplify the example and say that the petitioner's position is akin to an alleged offender who is indicted, pleads not guilty, and sues out a petition for a writ of habeas corpus on the ground that his plea of not guilty—possibly buttressed by a verified pleading as in this case—requires his immediate release. To state the proposition is to recognize its absurdity."
>
> Brief and Argument of Respondent in Support of his Demurrer, etc. Pp. 6, 7.

This Court, in its opinion, page 4, quotes from the last paragraph of p. 29 of the respondent's brief. We might point out here that in the Court's opinion an omission was made from the statement as set forth in our brief. As set forth in the opinion, the quotation in part is:

> "* * * every moment of every hour from June 15, 1948."

As set forth in our brief, this portion of the quotation should read:

> "* * * every moment of every hour covering the period from June 7, 1948 to June 15, 1948 * * *".

The quotation from page 29 of the respondent's brief is only an extension and a restatement of the argument made by the respondent in the Court below. Comparison of the appeal brief and the brief below readily proves this statement. On the facts, therefore, there was no change of position by the respondent. On the facts, the respondent

did not for the first time urge his argument with respect to the period from June 7 to June 15, 1948 before the bar of this Court. We parenthetically note that the petitioner, having read our briefs below, was well aware of this fact.

Under the respondent's demurrer, the period from June 7, 1948, the date on which the Congressional hearings ended, up to and including June 15, 1948, the date on which the parole violator's warrant issued, is of utmost significance. The petitioner predicates his theory upon the fact that the parole violator's warrant, as issued, was not predicated upon any information upon which parole violation could be established. It is important to remember that the entire argument of the petitioner is that no information whatsoever was in existence on June 15, 1948. This constitutes a direct attack upon the warrant and upon the authority of Judge Rogers to issue it. The petitioner's approach in his pleading, therefore, was of necessity a negative one. That is, his pleading had to assert or allege that no information could have been presented before Judge Rogers on or before June 15, 1948, concerning parole violation by the petitioner.

If permitted to go to trial, the petitioner would have to establish by preponderating evidence that no such information existed. We argued below, as we argued here, that in support of such a theory, the petitioner's petition could not be a mere conclusion; that is, that he did not violate parole, but must allege facts from which such a conclusion could be drawn. The petitioner's traverse was designed to present such facts before the Court below. Our demurrer, it is true, admitted the allegations of fact which were asserted in the traverse, but we urged below, as we did here, that nothing in the traverse, except the petitioner's conclusion, covered the period from June 7, 1948 to June 15, 1948. The Court below in its opinion, did not even make any reference to our argument on this

point. The fact that it failed so to do, however, does not in any wise vitiate or diminish our original position.

This Court has noted our argument involving the period in question, but obviated the conclusion that must flow from this weakness of the petitioner's position, by blandly accepting petitioner's statement that our argument with respect to the period in question was not presented to the Court below and therefore could not be urged before this Court. On the record, such are not the facts and in this regard, it is respectfully urged that this Court committed error.

One of the greatest authorities on common law pleadings, Professor Charles A. Keigwin, states that there are two grounds upon which a demurrer may be taken: One, upon the ground that the facts, as stated, "defeat the pleader's case" or two, that a demurrer may be successfully urged upon the pleader's "failure to state facts which are requisite to complete his case." (Cases in Common Law Pleadings, C. A. Keigwin, p. 416.)

As shown by the excerpt from the respondent's brief filed in the Court below, it was urged that the petitioner failed to state facts with respect to the existence of information or the availability of information for the period from June 7, 1948 to June 15, 1948. We again submit that in view of the illumination cast upon our position by the respondent's brief in the Court below, the charge that we changed our theory on appeal is without foundation.

Underneath this point, we might properly call the Court's attention to the statement made by the Court that the respondent "failed to attack the sufficiency of the petitioner's pleadings in the trial court". The fact that the respondent filed a demurrer is undeniable. The respondent's demurrer below was not a special demurrer; that is, it did not attack matters of form, but did attack matters of sub-

stance and therefore was a general demurrer. As Professor Keigwin states:

> "A general demurrer is one which asserts simply that the pleading demurred to is not in law sufficient to require response from the demurrant, and assigns no reason for declaring it insufficient."
>
> Cases in Common Law Pleading. C. A. Keigwin, page 416.

> "* * * all defects in substance * * * [are] * * * grounds of attack by a general demurrer —that is, without previously specifying them as the subjects of adverse argument."
>
> Op. Cit., 417. (Parenthetical matter supplied.)

We fail to understand the statement of the Court that the sufficiency of petitioner's pleadings was not attacked. The very office of a demurrer is to make an attack on the sufficiency of the pleadings. In this finding by the Court, we again respectfully submit that fatal error was committed.

Further error was committed by the Court, we respectfully submit, in holding that it would be an unreasonable requirement for the petitioner to allege specific facts to show that he did not violate parole for the period from June 7, 1948 to June 15, 1948; particularly, in view of the fact that his traverse was some 625 pages in length. The length of a pleading cannot lend it weight. A careful reading of petitioner's traverse can lead to but one conclusion and that is, that it is composed of words and not allegations of fact. Cases should not be decided by the mere bludgeoning use of words. They ought to be decided upon the facts which comprise the case. The petitioner could have stated his entire position in a few, short, simple words:

> "I am on parole. I did not violate my parole and demand a hearing into the cause of my detention."

We submit that our demurrer to such a statement would, and should be as effective as our demurrer to the petitioner's 625-page traverse, which violates every rule of pleading. Federal Rules of Civil Procedure, Rule 8(a).

The very function of a demurrer is to require the court to examine all the pleadings in detail to determine whether or not the demurree has stated a cause of action.

> "A demurrer interposed to any pleading after the declaration—such as a plea or replication—operates as a challenge to the opposing party's whole case as made by prior pleadings and completed by the last. Upon such ultimate demurrer it is the duty of the court to review the course of the controversy from its beginning * * *"
>
> Cases in Common Law Pleading, C. A. Keigwin, p. 423.

2. This Court abstracted the following portion of the opinion below, found on p. 828 of the record as follows:

> "De Lucia's traverse to the Marshal's return to the writ does not contend that the information upon which the parole board member issued the warrant was not reliable. The traverse alleges substantially, that the members of the parole board did not have any information in respect of a violation of the terms and conditions of De Lucia's parole when the warrant was issued. It alleges that the member of the board who issued the warrant had previously testified before the Congressional Committee that no report or evidence of a violation of parole by De Lucia had been received by the board. And it asserts that the parole warrant was issued solely because the parole board member had been pressed to such action by the legislative committee.
>
> "The legal effect of the demurrer filed by the United States Attorney acting on behalf of the parole board member is to say that even if all of the allegations in the traverse are true, nevertheless the detention of

> De Lucia under the parole warrant is legal and may not be inquired into by this court." (Tr., page 828.)

On page 5 of the opinion, immediately following the above quotation, this Court held:

> "We cannot reject a finding of the trial court unless it is clearly erroneous. Federal Rules of Civil Procedure, rule 52, 28 U. S. C. A. following section 723c, * * *. The record here is such that we cannot say as a matter of law that the findings are erroneous."

The Court by this statement invokes the provisions of Rule 52(a) of the Federal Rules of Civil Procedure, in order to preclude a review of a "finding" made by the Court below. In other words, it is the apparent position of the Court that there is sufficient in the record to sustain the "finding" by the Court below that the members of the Parole Board did not have any information with respect to a violation of parole by the petitioner at the time the parole warrant was issued. To say that this position of the Court was sired in error by the dam misguidance would be to employ the language of restraint. We can see no justification for this position. The very Rule upon which the Court relies, Rule 52(a), provides:

> "In all actions tried upon the facts without a jury, or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon. * * *"

We note the first requirement of this Rule, and that is, that an action must be tried upon the facts; that is, the court must receive and consider testimony of witnesses and the exhibits offered by the parties litigant; that it must weigh and evaluate conflicting statements of fact as submitted by witnesses and other competent evidence; that it must sift the evidence offered by testimony, or otherwise, and arrive at the true facts of the case by the sound exercise of judgment. These are only some of the factors that are

entailed in an action tried upon the facts. The record in the cause before the bar in this appeal definitely and affirmatively establishes that there was no trial upon the facts before the Court below. The case was determined by an examination of the pleadings upon the filing of a demurrer. It would indeed be a dangerous doctrine, if followed, to assert that a reviewing court was bound by Rule 52(a) upon determinations made by lower courts upon motions to dismiss, demurrers, or motions for judgment on the pleadings. The effect of such a doctrine would be to cripple appeal jurisdiction and emasculate it to such an extent as to make appeals fruitless.

One good example of the viciousness of this rule, if followed, is best illustrated upon the rulings given by courts upon a motion for directed verdict, after the plaintiff has presented his case to the jury. A motion for a directed verdict is, of course, a demurrer to the evidence. If sustained, this court would be precluded from examining the evidence to determine whether or not the motion was properly granted, by virtue of the cloak of immunity with which the judge's "finding" becomes vested under Rule 52(a); that is, if the court would follow the doctrine herein asserted.

A district court's ruling upon a motion to strike, or a demurrer, or like motion, does not preclude nor bar this Court from examining the facts alleged in the pleadings and make its own determination with respect thereto.

> "It is, of course, axiomatic that the motion to dismiss for failure to state a cause of action admitted all facts well-pleaded, but since there is no disputed issue of fact, this principle is not determinative of the issue presented on appeal. *Where there is no issue of fact in dispute,* the question whether the complaint stated a cause of action becomes one of law to be decided by the court." *Schmidt* v. *United States,* ____ F. 2d ____ (C. A. 10). (Emphasis supplied.)

We again reiterate there were no disputed allegations of fact, as distinguished from disputed conclusions of fact, presented to the Court below and the axiomatic principle enunciated in the cited case becomes applicable on appeal. To hold otherwise, would be to take us back into the alleged "intricacies" of common law pleading, which are sought to be obviated in the Federal Rules of Civil Procedure. If such doctrine is upheld, a pleader might be better served by adhering to the unbending rigidity of common law pleading, rather than to the unpredictable flexibility of the present rules.

We further call the Court's attention to the specific provision of Rule 52(a) which postulates that:

> "Findings of Fact and Conclusions of Law are unnecessary on decisions of motions under Rules 12 or 56, or any other motion, except as provided in Rule 41(b)."

This provision was added to the Rules by amendment, effective March 19, 1948.

Thus, it is clear that in the instant case, if a "Finding" was made by the Court below, as stated in the opinion of this Court, then such "Finding" was not invested with the shield of the rule precluding independent examination by this Court of the facts alleged in the pleadings involved in this cause. Moreover, there is nothing in the opinion of the Court below to indicate that the Court intended his opinion to stand as findings of fact and conclusions of law. The memorandum simply expresses the view of the Court below and his analysis of the problem presented by respondent's demurrer.

The urging upon the Court by the petitioner of the familiar rule that findings of fact cannot be reviewed upon appeal, except where clearly erroneous, has no application to the cause on appeal and we respectfully submit has led this Court into the path of error.

3. On page 5 of this Court's opinion, the Court makes the following statement:

> "It may well be that had there been, in this case, any information on the part of the board member who issued the warrant that petitioner had violated his parole, the court would have had no power to interfere and determine whether that information was or was not reliable. *United States* v. *George S. Bush & Co., Inc.*, 310 U. S. 371; *Christianson* v. *Zerbst*, 89 F. 2d 40, 10th Cir., *Rogoway* v. *Warden*, 122 F. 2d 967, 9th Cir., *United States ex rel. Jacobs* v. *Barc*, 141 F. 2d 480, 6th Cir. But here it was admitted by respondent's demurrer that there was no information of any violation by relator. * * *".

We shall not once again labor the point that our demurrer did not admit the conclusion that petitioner had not violated parole. We believe we have sufficiently demonstrated—not only under our first point in this petition for rehearing, but in our brief—that the facts alleged in the petition cannot admit such a conclusion.

It is our present purpose under this point to demonstrate to the Court that the petitioner was advised of the formal charges against him which gave rise to the issuance of the parole violator's warrant. On pp. 785, 786 of the Record, we find this statement made to the Court below by counsel for the petitioner:

> "Formal Charges Against De Lucia.
>
> "Since the pleadings were filed in the case at bar the Parole Board has furnished De Lucia a specification of the charges designated by the Board as a referral, as follows:
>
> Referral for Consideration of Alleged Violation.
>
> To: United States Board of Parole Date June 15, 1948.
> Case of Paul De Lucia No. 62118-L
>
> Sentence 10 years District from Southern New York
> Original offense Violation of Anti-Racketeering Act.
> Title 18, Section 420-A, U. S. Code.

Sentence began March 8, 1944 Released August 13, 1947. District to Northern Illinois C. R. (or) Parole X. Violation date Divers occasions since release Termination date March 7, 1954.

Present offense:

1. Failure to make full and truthful written reports to the Supervisor of Parole.
2. Untruthful statements covering expenditures during the months of December, 1947 and January, 1948.
3. Association with persons of bad reputation.
4. Failure to conduct himself honorably.
5. Failure to reveal source of monies used in settlement of Internal Revenue tax, when questioned before a legally constituted body.

To Marshal: Warrant Ordered by:

District _____

Date Signed by:

_____

Your Honor will remember that at first the Parole Board evaded a request for a specification of the charges by referring us to Mr. Otto Kerner, who was also kept in the dark. Now the Board has furnished the above which is, of course, general in its nature. De Lucia would welcome a chance to meet these charges, general as they are, and will undertake to prove not only that they are unfounded but further that the Board must know that these charges have been made without evidence."

It thus becomes abundantly manifest that the warrant was issued because of five distinct violations committed by the petitioner, any one of which is sufficient to sustain the issuance of the warrant. We pointedly note that counsel for the petitioner desired to try these charges in the habeas corpus proceeding and not before the forum provided him by law. This forcefully demonstrates the position of the petitioner in attempting to choose his

forum, rather than to follow, as needs must be, his remedy in the forum provided under the statutes.

Basically, the petitioner assertedly seeks due process. (R. 10.) Petitioner's entire premise in this respect is that due process could only have been afforded him by a hearing under a petition for a writ of habeas corpus. But it is too basic a tenet of constitutional law to require citation that the "hearing" encompassed by due process is not necessarily a judicial hearing. The petitioner, having been supplied with the factual basis upon which the parole violator's warrant issued prior to a hearing before the forum created by Congress, is precluded from choosing any other forum.

Under this point we again stress that this record affirmatively shows the information upon which the member of the Parole Board acted, in ordering the arrest of the petitioner and holding him to a hearing upon charges that he violated his parole.

4. This Court, on pp. 6 and 7 of its opinion, states that a district court has jurisdiction over administrative acts when proof shows that an administrative body has acted without statutory authority and that the rule requiring exhaustion of administrative remedies in such instance does not apply. In the instant case, the Court assumes that proof exists which shows that the Parole Board acted without statutory authority. We have demonstrated from this record the facts upon which the Parole Member acted. Such an assumption by the Court is therefore not a valid one.

But, be that as it may, we contend that the Court, in arriving at this conclusion, has given no consideration nor weight to the doctrine of exhaustion of administrative remedies, as set forth in the Supreme Court cases cited in respondent's brief (pp. 31-48).

We can think of no better application of the rule asserted by the Court than one in which the charge is laid that an act of Congress is unconstitutional and that therefore, any administrative act done under such an unconstitutional statute has any legal force or effect. But, yet, the Supreme Court of the United States has refused to entertain a cause making such an assertion, prior to the exhaustion of the administrative remedies provided. *Aircraft and Diesel Corporation* v. *Hirsch,* 331 U. S. 752.

Congress, which has the constitutional power to divest district courts of jurisdiction, has in innumerable instances provided for disposition of the rights of individuals in administrative proceedings. Constitutionally, such legislation has been upheld uniformly by all the courts of the land from the highest to the lowest. It is no answer to the exercise of this power to say that the administrative body, charged with the determination of facts upon which the enforcement of appropriate sanctions exist, does not have jurisdiction prior to the time the administrative body determines its own jurisdiction by holding a hearing.

On this point, we call the Court's attention to the fact that administrative bodies and courts of law in their exercise over personal rights and property rights are co-equal. The judicial branch of the Government is not the only branch to which is entrusted protection of personal rights guaranteed by the Constitution. In the instant cause, Congress has provided a body to hear charges laid against the petitioner. In providing for such a hearing, the Congress has acted within its Constitutional competence. The courts should be most reluctant to interfere with the duties imposed upon the Parole Board in the instant cause, at least until such time as the hearing provided for by Congress has been held.

> "The judiciary, today, in dealing with the acts of their co-ordinate legislators, owe to the country no greater

> or clearer duty than that of keeping their hands off these acts wherever it is possible to do it." J. B. Thayer, *John Marshall,* p. 110.

This Court, in *United States* v. *Ruzicka,* 152 F. 2d 167, ruled that unless Congress makes an administrative remedy exclusive, the court should be open to an individual affected by administrative action. Judge Kerner of this Court, in a dissenting opinion, we believe, succinctly stated the rule which should be applied in the cause before the bar:

> "The law is now firmly settled that where a right of review is conferred by a statute the aggrieved party or litigant must invoke and exhaust the administrative remedy provided by the statute before he may resort to the courts. *Aiuiston Mfg. Co.* v. *Davis,* 301 U. S. 337, 57 S. Ct. 816, 81 L. Ed. 1143; *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381, 60 S. Ct. 907, 84 L. Ed. 1263; *Myers* v. *Bethlehem Shipbuilding Corporation,* 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638; and *Yakus* v. *United States,* 321 U. S. 414, 64 S. Ct. 660, 88 L. Ed. 834." *United States* v. *Ruzicka,* 152 F. 2d 167, 171.

In the cited case, the Government appealed from the adverse ruling of this Court. The Supreme Court of the United States granted certiorari and reversed. *United States* v. *Ruzicka,* 329 U. S. 287. In that case, the Supreme Court held that Congress need not make an administrative remedy exclusive, but that such intent of Congress, "* * * though not explicitly stated in words, may be imbedded in a coherent scheme." *United States* v. *Ruzicka,* 329 U. S. 287, 292.

We submit that in respondent's brief we have set forth such an imbedded scheme in the various acts of Congress hereunto applicable. (Respondent's Brief, pp. 31, 32, 33 and 34.)

We particularly call the Court's attention to the state-

ment made by the United States Supreme Court in *United States* v. *Ruzicka*, 329 U. S. 287, 295, which, we feel, is peculiarly and forcefully appropriate to our position before this Court:

> "* * * it is important to remember that courts and administrative agencies are collaborative 'instrumentalities of justice,' and not business rivals."

The doctrine asserted in this Court's opinion, that a parole violator may seek judicial determination as to whether or not he has violated his parole, or as to the sufficiency of the parole violator's warrant before the statutory hearing provided, may cause difficulty to the district courts of the United States in administering the probation statutes. One of the provisions of the statutes on probation is that:

> "At any time within the probation period, the court which granted probation may issue a warrant for the probationer's arrest. * * * Such probationer shall forthwith be taken before the court and the court may revoke the probation. * * *" 18 U. S. C. 3653.

By way of example, the District Court for the Northern District of Illinois could issue a probation violator's warrant for the apprehension of a probationer in Mississippi. Under the doctrine set forth in the Court's opinion, such probationer could sue out a petition for a writ of habeas corpus in Mississippi and challenge the fact that he violated probation and demand a hearing before the District Court in Mississippi. The mere statement of this illustrative case sets forth the procedural morass which can result, and in the instant cause, did result, by having the Mississippi court interfere with the operations of the Illinois District Court. The net result would be the establishment of a devious principle which would permit any judge in the United States to inquire into the acts of any other judge and demand from such other judge the basis for his position in issuing a probation warrant. The ready answer to this might be that such is not contemplated by the probation statute—to which we agree—but add that neither was such a result contemplated by the parole statutes.

We therefore submit most respectfully that the Court erred in holding that the Court below could make inquiry into the cause of petitioner's apprehension before petitioner's hearing, as provided by statute.

5. The Court on pp. 7 and 8 of its opinion asserts certain distinctions between the instant cause and a similar cause decided by the Fifth Circuit, *Hiatt* v. *Compagna and Gioe*, ____ F. 2d ____ (C. A. 5).

Initially, we note the statement of the Court that it was significant that the petitioners in the *Hiatt* case were arrested after September 1, 1948. Such is not the fact. The petitioner in his brief reports in full the decision of the District Court for the Northern District of Georgia, from which the appeal in the *Hiatt* case was taken. We quote from p. 93 of the petitioner's brief, setting forth the opinion of the Georgia District Court:

> "They were, on August 13, 1947, released on parole. They remained at large on parole until arrested on July 23, 1948, upon Parole Violator Warrants dated July 21, 1948 and signed by Judge Fred Rogers, Member of the United States Board of Parole. They were immediately thereafter returned to the Federal Penitentiary in Atlanta, Georgia." (Petitioner's Brief, p. 93.)

By way of emphasis, we restate that Compagna and Gioe were arrested on July 23, 1948 by parole violator's warrants issued by Judge Rogers on July 21, 1948. This fact may be further verified by reference to the record in Case No. 9710, *United States of America, ex rel. Louis Compagna, Petitioner-Appellant,* v. *United States Board of Parole, Respondent-Appellee,* pending before the bar of

this Court. It is thus apparent that the distinction asserted by the Court must fail.

In further distinguishing the *Hiatt* opinion from the present opinion, this Court stated that, "The relator in this case was never made aware of any conditions of his parole which he was charged with violating." We have heretofore demonstrated by reference to the record, p. 875, that the relator in this case was aware of the conditions of his parole which he was charged with violating.

We respectfully submit that the distinctions between the present opinion and the *Hiatt* opinion, as stated by the Court, do not obtain.

We further submit that the opinion of the Court of Appeals for the Fifth Circuit should be given the persuasive weight to which it is entitled.

Conclusion.

Wherefore, the respondent-appellant prays for a rehearing in the instant cause and that upon further, due consideration, the Court recall its opinion heretofore issued, reverse the Court below, and issue its mandate, directing that the petitioner be remanded to the custody of the respondent, to be dealt with according to the laws of the United States.

OTTO KERNER, JR.,
United States Attorney.

JOHN PETER LULINSKI,
Assistant United States Attorney.

APPENDIX.

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Northern District of Illinois,

Eastern Division.

United States of America *ex rel.* Paul de Lucia, *Petitioner,* *vs.* Thomas P. O'Donovan, *Respondent.*	No. 48-C-867.

Brief and Argument of Respondent in Support of His Demurrer to Petitioner's Traverse.

OTTO KERNER, JR.,
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EDWARD J. RYAN,
JOHN PETER LULINSKI,
Assistant United States Attorneys.

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Northern District of Illinois,

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United States of America *ex rel.*
Paul de Lucia,
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vs.
Thomas P. O'Donovan,
Respondent.
} No. 48-C-867.

Brief and Argument of Respondent in Support of His Demurrer to Petitioner's Traverse.

STATEMENT OF FACTS.

The instant cause was initiated by the filing of a petition for a writ of habeas corpus on June 16, 1948. On the same day, the writ of habeas corpus having been granted and made returnable forthwith, the respondent filed his return and produced the body of the petitioner in the late afternoon.

Thereafter, respondent filed his first amendment to his return, to which the petitioner filed a traverse. Pleading was concluded by the lodging of a demurrer to the traverse. Oral argument was heard by the Court on July 8, 1948, whereupon the Court took this cause under advisement and requested briefs of counsel.

Insofar as here material, the petition and traverse allege the following facts:

1. That the parole warrant issued by Judge Rogers is based solely on information afforded to the Parole Board by a Congressional Committee investigating the release of petitioner and others on parole. Fifteen volumes of the hearings were filed with the Court as a part of the traverse.

2. It is alleged that no scintilla of evidence which would constitute reliable information is to be found in the entire Congressional Report. We do not deem it necessary to review or condense the contents of the Congressional Report.

3. It is further alleged that at least until June 7, 1948, by the admission of one of the parole members, Judge Rogers, the petitioner had not violated his parole; and it is further self-asserted that the petitioner did nothing from June 7 to June 15, 1948, the date of the issuance of the parole warrant, to violate his parole.

4. It is further alleged that the local parole authorities have not reported any violation to the Parole Board and that at least as of June 7, 1948, a thorough investigation by the Federal Bureau of Investigation had not disclosed any violation by petitioner.

5. Petitioner then affirmatively states that although his daughter was married and had a large wedding reception, the money so spent need not have been reported currently to the parole authorities; that in any event, the wedding was paid for by contributions of the guests. Moreover, petitioner asserts that he is a person of affluence and means and impliedly states that he could afford an expensive wedding, albeit he need not have reported expenditures that were made for the wedding reception until he filed his last report of the year, having been allegedly advised by

local parole agents that petitioner could make corrections and changes at any time within the year.

6. Petitioner further charges that he knew of no undesirable "characters" who were present at his daughter's wedding reception; that since there were some seven hundred guests there, in default of a bill of particulars stating who were undesirable, he could do nothing but deny that any of the guests present at the wedding reception were undesirable. (See pp. 27-28 of traverse.)

7. Petitioner further contends that if a hearing is held in any other judicial district of the United States, he would be denied due process in that, allegedly, if he committed a violation of his parole, he must have committed it in this district. Petitioner is dubious, even in advance of his administrative hearing, that such hearing would be according to the form of due process. Petitioner seems to concede that the administrative hearing afforded by the Parole Board is ordinarily exercised within proper limits for the good of the convicts and the best interests of society; but that this case is such an extraordinary and especial one, that the only manner in which he can be afforded due process is to have a hearing here and not before the bar of this Court. (See p. 29 of Traverse.)

8. No reference is made in this statement of facts to the various questions raised by the petitioner with respect to his conviction and the sentence imposed upon him by the District Court for the Southern District of New York. It is our understanding that Your Honor has indicated that the questions raised with respect to the New York conviction are not open to review in this proceeding.

ARGUMENT.

I.

The Parole Board's Determination of What Is Reliable Information as a Basis for the Issuance of a Parole Violator's Warrant Is Not Subject to Judicial Inquiry Until Such Time as the Administrative Provisions Governing Revocation of Parole Are Complete and Final: That is to Say, the Reliability of the Parole Board's Information Is Not Subject to Judicial Inquiry Until the Parole Violator Has Had his Hearing, Pursuant to the Statute.

At the outset, it might be well to point out that the petitioner is not entitled to constitutional due process insofar as his enlargement on parole is concerned. His rights as a parolee, if any, are fixed and determined by statute (18 U. S. C. §§ 714, *et seq.* set forth in the appendix hereto). Parole, like probation, is a matter of grace. The parolee has been afforded due process at his trial. In the instant case, for example, an appeal was taken to the Circuit Court of Appeals and certiorari was denied by the Supreme Court. After hearing and conviction, constitutional due process has been exhausted.

The only protection which might be afforded to a prisoner is under the constitutional clauses with respect to property and cruel and unusual punishment. *Escoe* v. *Zerbst*, 295 U. S. 490, 492, 493, 494. This is emphasized at the outset in order that there may be no confusion with respect to the advertence made by the petitioner concerning "due process". His rights as a parolee are governed solely by the parole statute. *Fleming* v. *Tate*, 146 F. (2d) 848, 849.

Petitioner's position is—for the reasons enumerated in

our statement of facts—that Judge Rogers of the Parole Board did not have any reliable information with respect to whether or not the petitioner had violated his parole and that in default of such reliable information, the warrant is void.

We shall demonstrate first, that the petitioner falsely premises his argument upon a set of facts tailored to fit the conclusion he seeks to establish. For example, he says that up to June 7, 1948, when Judge Rogers testified before a Congressional Committee, he allegedly had no knowledge of any violation by the petitioner; that consequently, he could not have committed any violation, at least up to and including June 7, 1948. Then the petitioner naively alleges that he himself will testify that he did not commit any violation from June 7, 1948, to the date of the issuance of the warrant. This self-serving conclusion is, of course, not admitted by the respondent's demurrer to the traverse. He further seeks to buttress his non-violation by stating that local parole officials would testify that he did not violate parole.

On the effect of the testimony of a local parole officer, which is contrary to a parole violator's warrant, see *Klinkner* v. *Squier*, 144 F. (2d) 490.

The petitioner further, in attempting to establish non-violation, makes reference to his daughter's wedding and the expenditures connected therewith, and the fact that association with the seven hundred guests would not constitute a violation of his parole. What petitioner cannot seem to grasp as a matter of hard logic is that the reliable information upon which Judge Rogers acted may have been given to him five minutes before he issued the warrant, or may in no wise be connected with the information to which petitioner seeks to limit Judge Rogers. In effect, what the petitioner is attempting to do is to persuade the Court that the only information upon which Judge Rogers

could have acted in issuing the parole warrant is the information contained in his petition and in his traverse. This is the building of a conclusion upon a conclusion—the first conclusion being that the only information available to Judge Rogers is that stated so carefully by the petitioner—and secondly, the self-asserted conclusion that the petitioner has not violated his parole. It is tantamount to pleading not guilty to an indictment and asking for an immediate release in habeas corpus before the prosecution may introduce its evidence.

One might amplify the example and say that the petitioner's position is akin to an alleged offender who is indicted, pleads not guilty, and sues out a petition for a writ of habeas corpus on the ground that his plea of not guilty—possibly buttressed by a verified pleading as in this case—requires his immediate release. To state the proposition is to recognize its absurdity.

Petitioner assumes that he has a right to examine the reliability of the Parole Board members' information before hearing. This assumption is without warrant in law. The authorities uniformly hold that the information of a Parole Board member is not reviewable prior to hearing.

> "* * * the reliability or sufficiency of the information upon which the Board acted is not a matter for determination by the courts in a proceeding for habeas corpus."
>
> *Fox* v. *Sanford,* 123 F. 2d 534, 535.

See also *Bowers* v. *Dishong,* 103 F. 2d 464, 466; *Christianson* v. *Zerbst,* 89 F. 2d 40, 42; *Rogoway* v. *Warden,* 122 F. 2d 969; cert. den. 315 U. S. 808; *Bass* v. *Hiatt,* 50 F. Supp. 420 and *Story* v. *Rives,* 97 F. 2d 182.

The narrow point we have to deal with in the instant case resolves itself to the question of whether or not the Court may judicially inquire into the custody of the petitioner prior to the final step to be taken in the determination of

whether the petitioner violated his parole. The principle has long obtained in administrative law that no court may review an administrative proceeding until the administrative proceeding has become final. In short, judicial inquiry is precluded until the administrative remedy has been exhausted. In the instant case, the administrative remedy will not have been exhausted until such time as a hearing is held and an order entered pursuant to the provisions of Section 719 of Title 18 of the United States Code.

> "The very purpose of providing either an exclusive or an initial and preliminary administrative determination is to secure the administrative judgment either, in the one case, in substitution for judicial decisions or, in the other, as foundation for or perchance to make unnecessary later judicial proceedings. Where Congress has clearly commanded that administrative judgment be taken initially or exclusively, the courts have no lawful function to anticipate the administrative decision with their own, whether or not when it has been rendered they may intervene either in presumed accordance with Congress' will or because, for constitutional reasons, its will to exclude them has been exerted in an invalid manner. To do this not only would contravene the will of Congress as a matter of restricting or deferring judicial action. It would nullify the congressional objects in providing the administrative determination. In this case these include securing uniformity of administrative policy and disposition, expertness of judgment, and finality in determination, at least of those things which Congress intended to and could commit to such agencies for final decision."
>
> *Aircraft & Diesel Corp.* v. *Hirsch,* 331 U. S. 752, 757, 768.

The contention of the petitioner that the warrant is without basis or foundation in fact, and therefore he is entitled to a review of this contention in advance of the final hearing, is contrary to settled law. In *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, the contention was made

that a complaint filed by the National Labor Relations Board was completely without basis in foundation or in fact, the corporation asserting in a verified complaint for an injunction that it was not engaged in interstate or foreign commerce and that therefore, it was not subject to the jurisdiction of the National Labor Relations Board. Justice Brandeis, speaking for a unanimous court, disposed of this contention as follows:

> "The Corporation contends that, since it denies that interstate or foreign commerce is involved and claims that a hearing would subject it to irreparable damage, rights guaranteed by the Federal Constitution will be denied unless it be held that the District Court has jurisdiction to enjoin the holding of a hearing by the Board. So to hold would, as the Government insists, in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance. The contention is at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. That rule has been repeatedly acted on in cases where, as here, the contention is made that the administrative body lacked power over the subject matter.
>
> "Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact."
>
> *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 50-52.

The Court's attention is specifically directed to Footnote 9 in the cited decision, making this principle applicable to proceedings at law, as well as to suits in equity.

The effect of tampering with the administrative process before it has ripened into final determination was aptly expressed by Justice Black in *Perkins* v. *Lukens Steel Company*, 310 U. S. 113, a case involving the Public Contracts Act which, *inter alia*, fixed minimum wage scales for all public contractors. Justice Black, after noting that more than a year had passed during which time responsible officials of the Government were restrained from obeying the will of Congress with respect to Public Acts, noted as follows:

> "The record here discloses the 'confusion and disorder' that can result from the delays necessarily incident to judicial supervision of administrative procedure developed to meet present day needs of Government and capable of operating efficiently and fairly to both private and public interests. In the appropriate words of Mr. Justice Sutherland, 'The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained.' "
>
> *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 130, 131.

The language of Justice Black and its admonition are peculiarly applicable to this case. To permit the petitioner to contest the warrant at this stage of the administrative process can only result in confusion and disorder and certainly results in negativing the administrative process set up by Congress for determination of revocation of parole.

The Court's attention is further called to the provisions of Title 18 which become effective on September 1, 1948. As the Court is aware, the present provisions relative to parole have been repealed and have been superseded by Sections 4201 through 4207 of Title 18. Section 4205 thereof provides as follows:

> "§ 4205. Retaking parole violator under warrant; time to serve undiminished.
>
> "A warrant for the retaking of any United States

prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced. The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve."

It will be noted that warrants, after September 1, 1948, will be issued for prisoners who have violated their parole without the prerequisite of "reliable information".

Section 4207 of the same Title then provides for revocation of parole at the time of hearing, or at any time in the discretion of the Board of Parole. These provisions are directed to the Court's attention, since they will be in effect at the time the Court will render decision upon the respondent's demurrer.

Conclusion.

Wherefore, it is respectfully submitted that the writ of Habeas Corpus heretofore issued be quashed and that petitioner's petition be denied as a matter of law, since the petitioner has not exhausted the administrative remedies provided him under the statute; and it is further respectfully submitted that the petitioner be remanded to the custody of the respondent, to be dealt with according to the laws of the United States of America.

Otto Kebner, Jr.,
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Lawrence J. Miller,
Edward J. Ryan,
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APPENDIX.

§ 717. *Same; violation of parole; warrant for retaking prisoner.* If the warden of the prison or penitentiary from which said prisoner was paroled or said board of parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner.

§ 719. *Same; action by board on issue of warrant; revocation of parole.* When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before said Board of Parole, a member thereof, or an examiner designated by the Board. The said Board may then, or at any time in its discretion, revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced.

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Northern District of Illinois,

Eastern Division.

United States of America, *ex rel.*, Paul De Lucia, *Peittioner*, *vs.* Thomas P. O'Donovan, Marshal, *Respondent.* } No. 48-C-867

Respondent's Reply Brief.

The petitioner in this trial brief takes the position that the Administrative Procedure Act (5 U. S. C. 1001, *et seq.*) confers upon this Court the right to review the action of the United States Board of Parole, prior to a hearing by the Board to determine whether or not parole should be revoked. Perforce, petitioner, in relying upon the Administrative Procedure Act, must predicate and base his right to review in this Court upon the jurisdiction conferred upon courts in general by the Administrative Procedure Act. That Act provides, *inter alia*, in Section 10 (5 U. S. C. 1009) as follows:

"Judicial Review.

"Sec. 10. Except so far as (1) Statutes preclude judicial review or (2) *Agency action* is by law committed to *agency discretion*." (Emphasis supplied.)

The Act sets forth, after the above extrapolation, detailed provisions for judicial review of administrative acts which, as hereinafter we submit, are not applicable to the instant cause.

The petitioner devotes some thirty-five pages of his eighty page brief to the proposition that Section 10 confers upon this Court the right to review the actions of the Board of Parole. Nowhere in these entire thirty-five pages does the petitioner make reference to the excepting clause of Section 10 of the Administrative Procedure Act.

There can be no dispute concerning the fact that the Board of Parole exercises discretion in granting or revoking paroles. The statute leaves the matter of granting parole, or revocation thereof, completely within the discretion of the Board and such discretion, by the express provisions of the Act above noted, is beyond the judicial review section of the Administrative Procedure Act. The legislative history of this Act explicitly takes cognizance of this exception:

> "Matters of discretion are necessarily exempted from the Section since, otherwise, courts would in effect *supersede agency function.*" (Emphasis supplied.) 79th Congress, Senate Report, Document No. 248, Page 275.

For further identical reference to the legislative history of this Section, see also pp. 212, 323, 368 and 415 of the above cited report.

On page 22 of his brief, petitioner makes reference to Judge Holtzoff's opinion in *Snyder* v. *Buck*, 75 F. Supp. 902. He leaves the inference that Judge Holtzoff, in effect, holds that every agency action is subject to review under the Administrative Procedure Act. This, of course, is not so, as the following excerpts from Judge Holtzoff's opinion in *Snyder* v. *Buck, supra,* eloquently attest:

> "Judicial review of administrative action is governed by Section 10 of the Act. Two classes of actions are excepted from the right of judicial review; first, those as to which statutes preclude judicial review; and, second, those as to which agency action is by law committed to agency discretion. A statute precluding judicial review may be one which expressly provides that any administrative action taken thereunder may not be re-examined and set aside by the courts. Or without expressly so asserting, it may clearly and affirmatively indicate that the action of the administrative agency is to be deemed final and conclusive for all purposes. For example, some of the statutes relating to the activities of the Veterans' Administration have been so construed, *Silberschein* v. *United States,* 266 U. S. 221, 45 S. Ct. 69, 69 L. Ed. 256.
>
> * * * * *
>
> "The second exception comprizes agency action which is by law committed to agency discretion. Among many illustrations of such actions are the making of contracts, the making of loans by lending agencies of the Government, the issuance of passports and visas by the Department of State, the issuance of visitors' permits by the Immigration and Naturalization Service, and countless other matters in which the agency is permitted by law to reach a conclusion on the basis of its own judgment and discretion. * * *
>
> * * * * *
>
> "Subsection (c) provides that every agency action made reviewable by statute and *every final agency action for which there is no other adequate remedy* in any court shall be subject to judicial review.
>
> "The conclusion is inescapable that under the Administrative Procedure Act every final agency action is subject to judicial review at the behest of any person whose legal rights are adversely affected, unless the action is taken under a statute precluding judicial review, or unless the agency action is by law committed to agency discretion.
>
> * * * * *

"The foregoing analysis irresistibly leads to the conclusion that every *final agency action* which is not in the realm of discretion, or in respect to which no statute precludes judicial review, and which adversely affects the legal rights of any person, is subject to judicial review under the Administrative Procedure Act. * * *" (Emphasis supplied.)

Snyder v. *Buck*, 75 Fed. Supp. 902, 906, 907, 908.

It is interesting to note the repeated references Judge Holtzoff makes to final agency action. Our position in our brief in chief is therefore substantiated by the protagonist selected by the petitioner.

It is our contention, and it has not been successfully disputed, that no final agency action has as yet taken place in the instant cause.

Petitioner further relies upon the case of *United States ex rel. Trinler* v. *Carusi*, 166 F. 2d 457. Petitioner stresses the fact that in the last cited case, a petition for review was filed before a deportee was taken into custody. But, here again, he fails to make reference to that section of the opinion which, *inter alia*, held that the agency action therein involved was final:

"The administrative process has come to an end."
United States v. *Carusi*, *supra*, p. 459.

In our case, the administrative process has, of course, not come to an end, since the Board of Parole has not yet determined whether or not there shall be a revocation of petitioner's parole.

In connection with judicial right to review administrative action, it is interesting to note the latest statement of our Supreme Court in this regard:

"This Court long has held that statutes which employ broad terms to confer power of judicial review are not always to be read literally. Where Congress has authorized review of 'any order' or used other equally inclusive terms, courts have declined the opportunity to magnify their jurisdiction, by self-denying constructions which do not subject to judicial control orders which, from their nature, from the context of the Act, or from the relation of judicial power to the subject-matter, are inappropriate for review. Examples are set forth by Chief Justice Hughes in *Federal Power Commission* v. *Edison Co.*, 304 U. S. 375, 384. *Cf. Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 130."

C. & S. Air Lines v. *Waterman Corp.*, 333 U. S. 103, 106.

And again, in *Ludecke* v. *Watkins*, 335 U. S. 160, the Supreme Court recognized that there may be a preclusion of judicial review without specific statutory prohibition. At page 165 of the cited report, Justice Jackson, speaking for the majority of his brethren, stated that Congress explicitly recognized in the recent Administrative Procedure Act that some statutes preclude judicial review.

It is interesting to note that the Supreme Court, in *Ludecke* v. *Watkins*, *supra*, was reviewing the provisions of the Alien Enemy Act, and there it was held that the discretionary powers vested in the President by the Congress to remove alien enemies was of such a high degree as to be immune from judicial review, except for questions of interpretation and constitutionality.

It is submitted that the discretion vested by Congress in the Parole Board is of the same type and degree and precludes judicial review, except for interpretation and constitutionality, within the procedural framework heretofore applicable to such review and independent of the Administrative Procedure Act.

The Supreme Court of the United States has held that where Congress has provided an administrative remedy,

questions of law, in which, of course, due process is included, must be submitted to the administrative agency before the courts will undertake review. Insofar as jurisdiction of district courts of the United States is concerned, their jurisdiction stems from enactments of Congress and if Congress provides a primary remedy before judicial jurisdiction obtains, such remedy must be exhausted, even if in its exhaustion questions of law are determined.

> "It is suggested that Congress did not authorize a district court to enforce an order not 'in accordance with law.' The short answer to this rather dialectic point is that whether such an order is or is not in accordance with law is not a question that brings its own immediate answer, or even an answer which it is the familiar, everyday business of courts to find. Congress has provided a special procedure for ascertaining whether such an order is or is not in accordance with law. The questions are not, or may not be, abstract questions of law. Even when they are formulated in constitutional terms, they are questions of law arising out of, or entwined with, factors that call for understanding of the milk industry. And so Congress has provided that the remedy in the first instance must be sought from the Secretary of Agriculture. It is on the basis of his ruling, and of the elucidation which he would presumably give to his ruling, that resort may be had to the courts. * * *"
>
> *United States* v. *Ruzicka*, 329 U. S. 287, 294.

If in the foregoing quotation, we substitute the Board of Parole for the Secretary of Agriculture, we have a complete expression of the principles which control the court in this cause.

In the Renegotiation Cases, *Lichter* v. *United States*, 334 U. S. 742, the Supreme Court of the United States expressly held that failure to exhaust an administrative remedy by taking an appeal therefrom provided for by statute precludes a litigant from judicial review of any

nature soever, except from the charge that the statute involved is unconstitutional *on its face*. The Court there held, citing from *Opp. Cotton Mills* v. *Administrator*, 312 U. S. 126, 152, 153:

> "The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective."
>
> *Lichter* v. *United States*, 334 U. S. 742, 791-792.

It is here apparent that no determination can be made with respect to the jurisdiction of the Board of Parole until a hearing has been held. All of the assertions of the petitioner, as we have heretofore noted, are merely speculation and conjecture. The petitioner sets up men of straw and knocks them down and therefore contends that jurisdiction does not obtain. He is in no position to assert upon what basis or ground the Board will or will not order revocation of his parole until such time as the statutory hearing, which will constitute due process in this case, shall be determined.

The challenge of unconstitutionality laid to a statute or the action of a board is to be used as a shield to protect inalienable rights, and not as a sword to permit continued liberty from lawful custody.

It is not to everyone who cries, "Unconstitutional! Unconstitutional!" that the courts grant relief. It is only to those whose actual rights have been invaded—and there is no showing here that the rights of a convicted felon have been invaded or are being invaded—that relief may be granted. In point of fact, the only showing here made by the petitioner is his obvious reluctance to submit to the process under which a determination may be made as to whether or not he had fulfilled the obligation imposed

upon him by the Board of Parole. After that hearing has been held, he may demand a full and complete review thereof, as provided by law.

The petitioner's position that the parole violator's warrant is in violation of law is, as we have heretofore noted, his own conclusion made without any reference to the evidence the Board has before it. The warrant being regular upon its face, it is not subject to collateral attack until the proceeding of which it is a part has been finally and completely determined.

In a recent identical case, *United States ex rel. Compagna* v. *O'Donovan,* Judge Barnes of our District said as follows:

> "That is the administrative procedure set forth by the statute. (Referring to Sections 719 and 723 (c) of former Title 18 of the United States Code.)
>
> "Mr. Stewart, upon behalf of the Relator, says that the Court now has power, and the duty when called upon, as now, to determine whether or not this warrant upon which the Relator is held has sufficient basis; Colonel Kerner, the District Attorney, on the other hand, says that the Relator must first exhaust his administrative remedies before he applies to the Court. That situation of administrative remedies has become well known. It is applied under many circumstances. The Supreme Court has continually been insistent, and I think properly, that administrative remedies shall be exhausted before a court shall be called upon to look into matters, and that doctrine set forth in administrative remedies, as I see it, may be employed not only in a situation like this, but in many other situations. It is a more orderly procedure. Just why this court, or any other court, should be called upon to determine a question which the Parole Board will be called upon to determine, pursuant to this Section 719, I can't understand.
>
> "I assume that if the Parole Board acts arbitrarily, or perhaps if there is no evidence to support its findings, some court will look into that matter and remedy any wrong which may result. I need not be concerned about that; what I am concerned with is whether or not this Court, at this moment, on the present state of facts, should interpose.
>
> "I think that these cases to which Colonel Kerner has called my attention, are conclusive, particularly this case of *Bowers* v. *Dishong, United States Marshal,* in 103 Fed. 2d at 464. * * *"

We shall, of course, not review the contentions made by the petitioner with respect to the New York judgment, found on pp. 66 to 74 of petitioner's brief. It is our understanding that Your Honor will not consider any contentions of the petitioner with respect to the New York conviction.

Conclusion.

It is respectfully submitted that the Administrative Procedure Act is not applicable to the case at bar and it is further submitted once again, for the reasons set forth in respondent's return, that the writ of habeas corpus heretofore issued be quashed, petition dismissed and petitioner remanded to the custody of the respondent, to be dealt with according to the laws of the United States.

Respectfully submitted,

Otto Kerner, Jr.,
United States Attorney.

Lawrence J. Miller,
Edward J. Ryan,
John Peter Lulinski,
Assistant United States Attorneys.

SAC, Washington Field

March 7, 1950

Director, FBI

LOUIS CAMPAGNA, was. et al
BRIBERY; PAROLE MATTERS

There is attached hereto for the Washington and Chicago Divisions a copy of a letter from New Orleans dated February 24, 1950.

The Washington Division should perfect arrangements to follow further appellate action in this case in the Supreme Court and advise the Bureau promptly as soon as action is taken by that court.

cc - Chicago (With enclosure)
New Orleans

RECORDED - 95
Enclosure
58-2930-2033

FBI

Tolson
Ladd
Clegg
Glavin
Nichols
Rosen
Tracy
Harbo
Mohr
Tele. Room
Nease
Gandy

CAE:mvd

MAR 17 1950

MAR 23 1950

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: February 24, 1950

FROM: SAC, New Orleans

SUBJECT: LOUIS CAMPAGNA, was.; et al
BRIBERY; PAROLE MATTERS
(Bureau File 58-2000)

Remylet 1/11/50.

OAKLEY F. DODD, Clerk, U. S. Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana, has advised that the case entitled LOUIS CAMPAGNA and CHARLES GIOE vs WILLIAM H. HIATT, Warden, U. S. Penitentiary, Atlanta, Georgia, has been docketted by the U. S. Supreme Court. The certificate of certiorari was filed on January 12, 1950, and was assigned No. 536, October Term 1949.

Inasmuch as the Fifth Circuit Court of Appeals will not act again on the above matter until it is decided by the U. S. Supreme Court, the Bureau may desire that the matter be followed by the Washington Field Office. In the event the Bureau so desires, that office should be requested to advise New Orleans and Atlanta if the matter is again referred to the Fifth Circuit Court of Appeals.

The New Orleans file in this matter is being closed.

MWC:mas
58-69

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58-2000-2033

FEB 27 1950

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. LADD

DATE: March 9, 1950

FROM : A. ROSEN

66054

SUBJECT: TONY GOBEL, wa Tony Goebels
(True Name, Anthony Ricci) aka; Bobo
MISCELLANEOUS - CRIME SURVEY alias: Mafia

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/2/95 BY SP5 [illegible]

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Mohr
Mr. Pennington
Mr. Quinn Tamm
Tele. Room
Mr. Nease
Miss Holmes
Miss Gandy

With reference to the Director's inquiry as to what the Bureau knows of the above individual, a member of the underworld in New York who was recently publicized in the Miami Daily News, the Bureau files reflect the following information concerning this individual.

Summary

Tony Gobel was born in Italy on January 1, 1893, and came to the United States when he was 5 years of age. He is presently 57 years old and resides at 125 Ocean Parkway, Brooklyn, New York. (58-2000-586, N.Y. letter to Bureau entitled "RACKETEERING ACTIVITIES IN US, CRIMINAL CRIME SURVEY" dated 2-3-50)

He has been known as a prominent hoodlum and a close associate of many "big name racketeers" at least since 1928. In an article appearing February 20, 1948 in the "Chicago-Herald American" former Lieutenant William J. Drury of the Chicago, Illinois, Police Department, described this individual as a former partner of Charles "Lucky" Luciano and as the person for whom Al Capone ran errands. According to Drury's article Gobel was responsible for sending Johnny Torrio from Brooklyn to Chicago to become the bodyguard of "Big Jim" Colosimo and for later sending Al Capone to act as bodyguard for Torrio at about the time Colosimo was killed. Drury also mentioned that Gobel was an associate of Louis Campagna, Chicago underworld character and formerly prominent in the Capone Gang, and that he allegedly ordered Campagna and three other subjects to ask that their paroles be revoked for the reason that these paroles had generated too much "heat". He was also reported to have ordered Anthony Accardo, notorious Chicago hoodlum, to plead guilty to Federal conspiracy charges arising from his connections with Campagna and his fellow parolees. (New York letter 2-3-50).

Gobel was the subject of investigation in the case entitled "LOUIS CAMPAGNA, was., et al, BRIBERY, PAROLE MATTERS". Upon the instructions of Mr. Peyton Ford the then Acting the Assistant to the Attorney General a technical surveillance was installed on the telephone at his residence, 125 Ocean Parkway, Brooklyn, New York, on December 5, 1947, and maintained until discontinued August 31, 1948. (58-2000-506, 588)

RECORDED 76 INDEXED SEP 25 58-2000-2034

APR 13 1950

This surveillance indicated that Gobel and Campagna frequently contacted each other telephonically but no evidence was developed that Gobel was involved in a Federal violation in connection with the parole matter. (58-2000-776,658,649, 648,644,839,1839,1160)

Gobel was interviewed by Agents in 1947 regarding his association with Campagna at which time he admitted a social acquaintance with him and with another subject Paul De Lucia. Gobel claimed they were causal friends with whom he had never had any business dealings whatsoever. He admitted that he knew about the parole of Campagna and the other subjects but claimed he knew of no irregularities connected with it and stated that he had nothing whatsoever to do with the paroles.

Attachment
JGL:phod

1 APR 5 1950

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62-75747-100
58-42303-11

Mr. Ladd.

[redacted] confidential informant of the New York Division, in 1946, identified Gobel as the leader of the "Division Avenue Gang" which operated in Brooklyn, and which was active in bookmaking, policy rackets, gambling, alcohol, stills, theft from interstate shipment and hijacking. The informant described Gobel as the lieutenant of Joe Adonis, notorious Brooklyn racketeer, and stated that he was the disciplinarian of the "Division Avenue Gang" and was the one who arranged for any beatings or killings necessary to carry out the gang's activities. b7D

Gobel was associated in 1947, in the Steel Window Servicing Corporation, a company engaged in the business of repairing and servicing steel window frames and making large glass installations, with one Louis E. Drago who in 1948 was the secretary to New York Supreme Court Justice Walsh, and who in the same year was Kings County Commander of the American Legion. (62-75147-34, serial 70, page 33).

He is also associated with Joseph Sharkey, a political leader in Brooklyn and a member of the New York City Council. (58-2000,1405, New York letter to Bureau, 2-3-50).

In addition to these contacts the New York Division has received continued reports that Gobel has many contacts with members of the New York City Police Department ranging from patrolmen to inspectors, which contacts allegedly make it possible for him to continue operation of his "horse parlors" and bookmaking activities in Brooklyn. (New York letter to Bureau, 2-3-50).

[redacted] a paid confidential informant of the New York Division, has advised that Gobel controls Italian and American policy games in the neighborhood of Nassau and Gold Streets, Brooklyn, and that his runners operate all over Brooklyn and also have contacts in New Jersey. b7D

Gobel has a financial interest in a bar and grill called "Bill and Jim's" on Surf Avenue in Brooklyn and has reportedly acquired immense wealth from his criminal activities. Informant [redacted] has estimated his worth in the millions. (New York letter to Bureau, 2-3-50). b7D

IDENTIFICATION RECORD

The files of the Identification Division reflect that Gobel, FBI #276249A, as Anthony Ricci was arrested by the New York City Police Department February 27, 1948, on a charge of vagrancy with no disposition appearing for this arrest.

The following arrests for Gobel which are unsupported by fingerprints also appear in the files of the Identification Division. On July 30, 1915, he was arrested as Anthony Ricci by the New York Police Department on a charge of felonious assault which was reduced to a charge of assault in the third degree and on which the sentence was suspended in County Court. He was next arrested

Mr. Ladd

on June 28, 1918, as Anthony Ricci by the New York City Police Department on a charge of Grand Larceny which charge was dismissed November 18, 1918. He was next arrested under the name of Anthony Ricco on January 13, 1921, by the New York Police Department on a charge of Grand Larceny and was discharged on April 5, 1921.

On May 6, 1923, he was arrested as Anthony Ricci by the New York Police Department on a charge of felonious assault and was discharged May 12, 1923. He was arrested as Anthony Gobel by the Chicago, Illinois, Police Department, March 30, 1928, on a charge of vagrancy and disorderly conduct and was discharged.

A copy of the Identification Record of Gobel is attached.

ACTION

The above is for your information.

FROM DO-7

OFFICE OF DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

TO:
OFFICIAL INDICATED BELOW BY CHECK MARK

Mr. Tolson	( )
Mr. Clegg	( )
Mr. Glavin	( )
Mr. Ladd	( )
Mr. Nichols	( )
Mr. Rosen	( )
Mr. Tracy	( )
Mr. Gurnea	( )
Mr. Harbo	( )
Mr. Belmont	( )
Mr. Mohr	( )
Mr. Nease	( )
Miss Gandy	( )
	( )

See Me	( )
Note and Return	( )
For Your Recommendation	( )
What are the facts?	( )

Remarks:

What do we know of Goebels?

memo re Raisen to Mr. Ladd 3/9/50 by GL:MUD

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/3/95 BY SP3 CAS

RECEIVED

58-3200-2034

ENCLOSURE

JOHN EDGAR HOOVER

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

Form T-2

1893.M.W.

Feb 7

The following is the record of FBI number 276 249 A

J. Edgar Hoover
Director.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Police Department New York, New York	Anthony Ricci #B-261555	February 27, 1918	Vagrancy (Section 887 Penal Law Sub. #1)	

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5a/aw

58-2000-2034

ENCLOSURE 1

* Represents notations unsupported by fingerprints in FBI files.

U. S. GOVERNMENT PRINTING OFFICE 16—15190

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JOHN EDGAR HOOVER

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

Form T-2

2.

The following is the record of FBI number 276 249 A

J. E. Hoover
Director.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION

July 30, 1915, as Anthony Ricci, Brooklyn, felonious assault, final charge assault third degree, sentence suspended County Court (per information received March 2, 1948 from Police Department, New York, New York).
June 28, 1918, as Anthony Ricci, New York City, grand larceny, on November 18, 1918 dismissed.
January 13, 1921, as Anthony Ricco, Brooklyn, grand larceny, on April 5, 1921 discharged (per information received March 2, 1948 from Police Department, New York, New York).
May 6, 1923, as Anthony Ricci, New York City, felonious assault, May 12, 1923, discharged.
March 30, 1928, as Anthony Gobal, Chicago, Illinois, vagrancy and disorderly conduct, discharged.

* Represents notations unsupported by fingerprints in FBI files.

U. S. GOVERNMENT PRINTING OFFICE 16—15190

NOTICE: THIS RECORD IS FURNISHED FOR OFFICIAL USE ONLY

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: March 21, 1950

FROM : GUY HOTTEL, SAC, WASHINGTON FIELD

SUBJECT: LOUIS CAMPAGNA, WAS., etal
BRIBERY; PAROLE MATTERS
Bureau file number 58-2000

ReBulet dated March 7, 1950.

Records of the U. S. Supreme Court reflect that a petition for writ of certiorari was filed by CAMPAGNA and CHARLES GIOE on January 12, 1950; that the Government has received an extension of time to file the answering brief until May 1, 1950.

The WFO will follow the action in the U. S. Supreme Court in this matter.

cc: SAC, Chicago
SAC, New Orleans (58-69)

TJJ:bh
58-261

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5a/ab

FBI
DEPT OF JUSTICE

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MAR 21 1950
31

EX-9

MAR 23 1950

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: March 30, 1950

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, was. etal
BRIBERY; PAROLE MATTERS
(Bufile 58-2000)

LAWRENCE J. MILLER, Assistant United States Attorney, Chicago, Illinois, on March 20, 1950 advised this office that no further action was contemplated against PAUL DE LUCIA.

The U. S. Circuit Court of Appeals has upheld the ruling of Federal Judge MICHAEL IGOE, who in June, 1948 released DE LUCIA on a writ of Habeas Corpus.

This matter will be kept in a pending status until disposition is made of the cases now pending against CHARLES GIOE and LOUIS CAMPAGNA.

CES:VLS
58-194

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HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5C/Cas

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58-2000-2036

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: May 11, 1950

FROM : SAC GUY HOTTEL, WASHINGTON FIELD OFFICE

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY; PAROLE MATTERS
Bureau File 58-2000

Remylet March 21, 1950.

As of May 9, 1950, the Clerk at the United States Supreme Court advised that the Government had not as yet filed their brief in the instant matter, but the case had gone before the court without the Government's brief.

The Washington Field Office will follow the matter in the Supreme Court in this matter. P*.

TJJ:DAW
58-261

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY 5eSa/cw

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EX-124 | MAY 12 1950

MAY 19 1950

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: May 9, 1950

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, Was., et al
BRIBERY; PAROLE MATTERS
(Bufile 58-2000)

Remylet 3/30/50.

By relet it was indicated that LAWRENCE J. MILLER, AUSA, Chicago, had advised that no further action was contemplated against PAUL DeLUCIA.

A news item appearing in the "Chicago Tribune" on April 27, 1950 indicated that the U. S. Supreme Court on 4/26/50 had extended the time in which the government may file an appeal from the decision of the U. S. Court of Appeals upholding the release of DeLUCIA. The newspaper article related that on December 8 the Appeals Court had upheld the decision of the lower court and on February 1 had refused to reconsider the matter. A few days later Mr. MILLER had advised that the government had abandoned its efforts to return DeLUCIA to prison. The newspaper article indicated that MILLER later reconsidered his previous action.

A copy of the appeal at the Supreme Court will be obtained as soon as it is ready for the completion of the Bureau's files and this office will continue to follow the case.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5 a/cw

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MAY 11 1950

EX-20

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: June 1, 1950

FROM : GUY HOTTEL, SAC
WASHINGTON FIELD

SUBJECT: LOUIS CAMPAGNA, was., et al
BRIBERY, PAROLE MATTERS
(Bureau File No. 58-2000)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY Sercabe

Remylets dated March 21, 1950, and May 11, 1950.

The records of the United States Supreme Court reflect that the petition for writ of certiorari was granted in instant matter on May 16, 1950, but that the case will not be argued before the Court until the fall of 1950.

This matter will be followed in the Supreme Court.

Pending*

58-2000-2039
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EX-11

53 JUN GTJ:FP 58-261 50

cc - Chicago
New Orleans (58-69)

EVANS

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: June 21, 1950

FROM : SAC, Chicago

SUBJECT: LOUIS CAMPAGNA, Was., etal
BRIBERY, PAROLE MATTERS
(Bureau File 58-2000)

Remylet May 9, 1950.

In addition to the action indicated in relet in this case concerning PAUL DeLUCIA local press reports recently have indicated that the Office of the United States Attorney, Chicago, has initiated new proceedings in the United States District Court, Chicago, before Judge MICHAEL IGOE who ruled on the original habeas corpus proceedings in favor of DeLUCIA.

These press reports reflect that on June 15, 1950 Assistant United States Attorney JOHN P. LULINSKI requested a new hearing from Judge IGOE to revoke DeLUCIA'S parole on the ground that he had "failed to conduct himself honorably".

Judge IGOE set August 31, 1950 as the date on which the hearing in this matter will be held.

The Bureau will be kept advised of developments.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3/2/95 BY SP5CAW
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